145-147

RECORD, CASE No. 13,468.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 315.

GEORGE G. LATTA, APPELLANT,

vs.

WILLIAM H. GAINES AND MARIA GAINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JANUARY 2, 1889.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Order filing demurrer to bill	13	4
Demurrer to bill	14	4
Order filing answer	15	5
Answer of defendants	16	5
Exhibit X—Deed, Kimbell *et ux.* to Latta and Moore, October 29, 1879	31	9
Order granting leave to amend complaint	35	10
Order granting leave to file amended answer	35	10
Answer of Hugh L. Maxwell	36	10
Order filing replication	43	12
Replication	44	12
Order as to submission, filing briefs, &c.	45	13
Interlocutory decree	46	13
Order filing master's report	49	14
Master's report	50	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 23, 1892.

	Original.	Print.
Evidence before the master	53	15
Testimony of Wm. H. Gaines	53	16
A. B. Gaines	54	16
C. N. Rix	59	18
S. P. Van Patten	60	18
P. J. Ledwidge	61	18
J. P. Mellard	61	18
G. G. Latta	62	19
Order filing exceptions to master's report	70	21
Exceptions to master's report	71	21
Order filing agreement as to testimony	75	23
Stipulation as to testimony, &c.	76	23
Final decree	78	23
Order allowing appeal	80	24
Order filing and approving bonds	80	24
Bond for appeal	81	24
Bond for costs	83	25
Depositions and proof on final hearing (omitted in printing)	86	—
Certified copy of petition No. 784, before the Hot Springs Commission, &c. (omitted in printing)	86	—
Petition of W. H. and Maria Gaines (omitted in printing)	87	—
Letter, Commissioner to register and receiver, November 25, 1851 (omitted in printing)	115	—
Letter, Secretary to Commissioner, November 21, 1851 (omitted in printing)	117	—
Application of Maria Gaines *et al.* (omitted in printing)	118	—
Register's certificates (" ")	119	—
Receiver's receipt, December 19, 1851 (" ")	120	—
Copy of tract book (" ")	121	—
Writ of possession (" ")	123	—
Statement of evidence offered (" ")	125	—
Testimony of William H. Gaines (" ")	130	—
Robert B. Runyon (" ")	153	—
Jacob W. Parker (" ")	165	—
Alfred Whittington (" ")	174	—
Jacob W. Parker (recalled) (omitted in printing)	181½	—
Abraham Peters (omitted in printing)	181½	—
Henry Robinson (" ")	184	—
Albert Belding (" ")	187	—
John H. Lacroy (" ")	188	—
William Curl (" ")	192	—
George Belding (" ")	195	—
Charles Brown (" ")	215	—
Joe Crichter (" ")	220	—
Elijah Harris (" ")	222	—
Nathan H. Cloyes (" ")	225	—
Samuel H. Stitt (" ")	231	—
Hiram Irwin (" ")	234	—
William H. Gaines (" ")	235	—
Alphonso Curl (" ")	246	—
Hiram Irwin (recalled) (" ")	247	—
George M. French (" ")	249	—

	Original.	Print.
Power of attorney from William H. Gaines to Albert B. Gaines, December 11, 1879 (omitted in printing)	252	—
Article descriptive of improvements of Abigail Dupass, March 25, 1852 (omitted in printing)	254	—
List of real property assessed for taxation (omitted in printing)	255	—
Quitclaim of George Belding *et ux.*, October 20, 1877 (omitted in printing)	256	—
Judgment of supreme court of Arkansas in Burke *es.* Gaines *et al.* (omitted in printing)	258	—
Deposition of C. B. Frost (omitted in printing)	260	—
John Neff (" ")	264	—
H. Cohn (" ")	267	—
W. P. Walsh (" ")	273	—
Dr. Geo. H. Smith (" ")	277	—
Jno. J. Sumpter (" ")	282	—
Wm. H. Gaines (" ")	285	—
Wm. Sumpter (" ")	295	—
Jas. A. Smith (" ")	297	—
S. W. Vaughn (" ")	298	—
Mrs. M. J. Worley (" ")	299	—
Jno. J. Sumpter (" ")	301	—
Mrs. Jennie A. Smith (" ")	304	—
Morris Moscowitz (" ")	307	—
Geo. W. Baxter (" ")	309	—
Clerk's certificate	317	26
Stipulation as to record and to omit parts of same in printing	318	26

1 Be it remembered that on the 23d day of May, 1884, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas William H. Gaines and wife, by M. W. Benjamin and R. G. Davies, Esqrs., their solicitors, and filed therein, on the chancery side of said court, their bill of complaint against J. W. Kimball *et al.*, which is in the words and figures following, to wit:

2 United States Circuit Court, Eastern District of Arkansas, October Term Thereof, 1884.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Plaintiffs,
vs.
J. W. KIMBALL, GEORGE G. LATTA, & HUGH MAXWELL, Defendants.

William H. Gaines and Maria Gaines, his wife, bring this suit against J. W. Kimball, George G. Latta, and Hugh Maxwell, and for cause of action allege—

That in the year of 1851, in pursuance of the instruction of the Secretary of the Interior, plaintiff Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, entered, under the pre-emption laws of the United States, the southwest quarter of section thirty-three, in township two (2) south, range nineteen (19) west, for which they paid the United States Government two hundred dollars, which was
3 advanced and paid by plaintiff William H. Gaines, and which money the United States still retains. At the time of said entry a small portion of said land was occupied by Mrs. Lydia Belding, widow of Ludovicus Belding, and the portion of said lands for which this suit is brought was occupied by —— ——, and in — William H. Gaines, Maria Gaines, Albert Belding, Henry Belding, and George Belding, under the supervision and control of William H. Gaines, brought suit in the Hot Springs circuit court against —— —— and recovered judgment for the possession of said land, which judgment was afterwards affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the — day of ——, 1856, William H. Gaines was, by the sheriff of Hot Springs county, put into possession of said
4 property by virtue of a writ of possession issued upon the judgment of said Hot Springs circuit court in obedience to the mandates of said supreme courts, both of the State and of the United States, and said plaintiffs, Wm. H. Gaines and Maria Gaines, his wife, remained in peaceable and quiet possession of said property until the first day of June, 1876, when they were dispossessed of said property by a receiver appointed by the Court of Claims of the United States under an act of Congress entitled "An act in relation to the Hot Springs reservation, in Arkansas," approved June 11, 1870.

Plaintiffs entered into possession by virtue of said entry and by virtue of the decisions of said State and United States supreme courts and the writs of possession issued in pursuance of said judgments,

and continued in possession for a period of about twenty years,
until the Supreme Court of the United States, in a suit to
5 determine to whom the patent should issue, decided that
said lands were not subject to pre-emption or entry, and that no claimant was entitled to a patent, but the same was still the property of the United States, which decision was rendered April 24, 1876. Plaintiffs during said twenty years paid taxes on said property and fenced and built houses on the same and otherwise improved the same. On the — day of ——, 187–, plaintiff William H. Gaines, being fully authorized by said heirs, leased a lot of ground, which has since been laid off into blocks and lots by the Hot Springs Commission in pursuance of an act of Congress and is now known as lot (8) nine and block (130) one hundred and thirty, to J. W. Kimball, which lease was for the term of one year, to be renewed at the election of the lessee from year to year until the title to the
Hot Springs quarter section of land was settled, for an
6 annual rent of —, payable in monthly installments of —.

Said lease also provided that all buildings and improvements erected on said lot by the lessee might be removed therefrom during the continuance of the lease or within thirty days thereafter, but that no buildings or improvements erected could be removed while said rent or any part thereof remained due and unpaid. It also provided that the lessor should have a lien on all buildings and improvements to secure the rent, a copy of which is hereto attached in Exhibit "A" and made a part hereof.

Said lessee took possession of said land under and by virtue of said lease only, and in no other way whatever, and he and — assigns occupied the same under said lease until the first day of June, 1876; at which time the United States Government dispossessed every party to this suit who was then in possession, and took possession and leased said lands & improvements in the name of the United States Government through A. O. Morgan, a receiver appointed by the U. S. Court of Claims for that purpose, and continued in the legal possession thereof until the same was entered at the U. S. Land office according to law, to wit, October 5, 1881; that on the 24th day
7 of April, 1876, said lessee and *their* assigns owed the lessor
for rent the sum of —.

Said lessee and *their* assigns failed to remove said buildings and improvements erected by *them* at any time during or within thirty days after the expiration of the lease, and, by virtue of the provisions of the lease, said buildings and improvements erected by said lessee and *their* assigns became the buildings and improvements of William H. Gaines.

That on the 23rd day of October, 1879, while said claims hereinafter mentioned were pending before said commission and before any award to the right to purchase had been made to either of said claimants, said lessee, J. W. Kimball, sold and transferred to George G. Latta and W. A. Moore all his right, title, and claim to said premises, he well knowing before said transfer all the terms and
conditions of said lease, which transfer was made without the
8 knowledge or consent of the plaintiff.

Said W. A. Moore has since sold and transferred all his right, title, and claim to said premises to Hugh Maxwell, who at the time of said purchase well knew all the terms and conditions of said lease and of plaintiffs' right thereto, which transfer was made without the knowledge or consent of the plaintiffs.

Plaintiffs, by arrangement with George, Henry, and Albert Belding, having become the owner- of said claim—to wit, by a deed from Albert, Henry, and George Belding for an undivided half of three-fourths of said preemption claim, a copy of which deed is attached hereto and made a part hereof, marked Exhibit "B;" also a deed from Albert Belding to William H. Gaines, for his interest in said claim, dated October 20, 1877, a copy of which is hereto attached and made a part hereof, marked Exhibit "C;" also a deed
9 from George Belding and a deed from Henry Belding for their respective interests, a copy of which deeds *are* in Exhibit "A" hereto—aver that in less than six calendar months after the first sitting of the Hot Springs Commission, under the act of Congress of the United States entitled "An act in relation to the Hot Springs reservation, in the State of Arkansas," approved March 3, 1877, they filed their claim before said commission to purchase said lots, and that J. W. Kimball, setting up in his petition that he got possession by a lease from William H. Gaines, filed a like claim, and that upon the hearing of said claims they were consolidated by said commission for the purpose of hearing the testimony; and said petitions filed and the testimony taken before said commission clearly showed that J. W. Kimball had acquired his possession in no other way but by
10 said lease made by plaintiff William H. Gaines to said J. W. Kimball, as will more fully appear from a complete copy of the petition, testimony, and record entries in said claims filed herewith and marked Exhibit "A" and made part hereof; and, notwithstanding that said petition and testimony showed that defendant J. W. Kimball acquired possession only by virtue of said lease, still said commission misconstrued the law applicable to that state of facts and awarded the right to purchase said lots to defendant J. W. Kimball, and since said award said defendant has purchased said lots from the United States and received a patent therefor, and on account of said misconstruction of the law as applied to the facts before said commission the right to purchase said lots, which in law, equity, and good conscience should have been awarded to plaintiffs,
11 was by said misconstruction of the law illegally and wrongfully awarded to defendant J. W. Kimball by said Hot Springs Commission.

Plaintiffs aver that as defendants have never had any other right or title to said lots or to the possession thereof than that which they derived from said lease and under covenants to restore possession to plaintiff William H. Gaines, that said defendants should be held to hold said lots as trustee- for the use and benefit of plaintiffs.

Plaintiffs offer to pay any sum of money that may be found due to the defendants or either of them by reason of any money paid to the United States for the purchase of said lots, and to do all other acts which may be found to be just and equitable. Plaintiffs aver

the property herein sued for is worth more than five hundred dollars, and that this cause of action arises wholly under the law of
12 the United States. Plaintiffs ask that defendants be required to answer, but not under oath. And they pray that an account may be taken of the state of accounts between themselves or either of them and said defendants severally; that they may be allowed reasonable rents for the occupancy of the said premises; that defendants may be decreed to hold said lots as trustees for the plaintiffs, and to convey the same to the plaintiffs, and that they may have such other relief as may be equitable.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

Good for costs.
M. W. BENJAMIN.

Filed and writ issued May 23, 1884.
RALPH L. GOODRICH, *Clerk,*
By W. P. FEILD, *D. C.*

13 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On June 28, 1884:

Comes the defendants, by George G. Latta, their solicitor, and files herein their demurrer to the bill; which demurrer is in the words and figures following, to wit:

14 United States Circuit Court for the Eastern District of Arkansas.

WILLIAM H. GAINES and WIFE, Plaintiffs,
vs.
J. W. KIMBALL, HUGH MAXWELL, and GEORGE G. LATTA, Defendants.

Comes the defendants and demurs to the complaint filed herein, and for grounds of demurrer states—

That the court has no jurisdiction of the subject of the action.

That the complaint does not state facts sufficient to constitute a cause of action against the defendants or either of them, and there is no equity in the bill.

Wherefore the defendants pray for judgement and for other relief.

GEORGE G. LATTA,
Attorney for Defendants.

Filed June 28, 1884.

RALPH L. GOODRICH, *Clerk.*

15 And on August 7, 1884, as follows:

Come the defendants, by George G. Latta, Esq., their solicitor, and by leave of the court file herein their answer; which answer is in the words and figures following, to wit:

16 United States Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES, His Wife,
vs.
J. W. KIMBELL, GEO. G. LATTA, and HUGH L. MAXWELL. } Answer.

Comes J. W. Kimbell and George G. Latta and Hugh L. Maxwell, the defendants herein, and for answer to the complaint in this action state that the allegations of the complaint, wherein is stated that Ludovicus Belding entered the southwest quarter of section 33, township 2 south, range 19 west, in pursuance of the instructions of the Secretary of the Interior and in accordance with the preemption laws of the United States, and that plaintiffs, William H. Gaines and Maria Gaines, Albert Belding, Henry Belding, and George Belding, under the supervision and control of William H.

17 Gaines, brought suit in the Hot Springs circuit court against —— —— and secured judgment for the possession of said land, and, in accordance with said judgment, was put into possession of said property, and the plaintiff- held peaceable possession of said property, and that plaintiffs built houses on said property and continued in the ownership of the same, are all untrue and not as stated by plaintiffs.

They deny that J. W. Kimball conveyed his right to lot No. 9, block 130, by relinquishment merely, and that defendant Kimbell sold and conveyed to George G. Latta and Hugh L. Maxwell subject to the lease of Gaines and the promises therein contained; that they deny all of the allegations of said complaint in referring to the lease as alleged to be executed by William H. Gaines and J. W. Kimbell.

18 The defendants George G. Latta and Hugh L. Maxwell deny that at the time of acquiring possession of said tract they knew of the lease or anything therein contained. The defendants deny that they derived their rights of possession of said property from the said William H. Gaines or Maria Gaines.

The defendants deny that said commissioners misconstrued the law applicable to the state of facts and awarded the right to purchase said lot to defendants wrongfully, and that the award thereof to said defendant- was wrong and in violation of the law and antagonistic to the evidence introduced in support of defendants' claim to said lot.

The defendants further say that if J. W. Kimball ever leased from the plaintiff Wm. H. Gaines any land, it was vacant and wholly unimproved at the time, and the instrument called a lease was

19 an unlawful contract; that if said plaintiffs did make to said J. W. Kimbell a lease for the tract of land now embraced in lot numbered ten, in block No. 130, it was made on the — day of

——, —, for the term of one year from the — day of ——, 187-, at an annual rental of —, in quarterly payments of — each, on the —, and that said lease was to be renewed from year to year, at the election of said Kimbell, until the title to said quarter section should be settled, on the same terms and conditions, and that it was stipulated thereby that the lessee should have the right to remove within thirty days from the expiration of the term all buildings and improvements which they should erect or build on the land, and that said lessee should not sublet or assign without the written consent of said plaintiffs.

That said defendants, George G. Latta and Hugh L. Max-
20 well, never leased said tract of land or any part of it from any one; that George G. Latta and Hugh L. Maxwell acquired the possession of and the right to said lot from J. W. Kimbell without knowledge of his tenure of title; that the said J. W. Kimbell erected on said lot a frame building that was afterwards destroyed by fire, and that after said fire another building was erected on said lot, which is now upon said premises.

The defendants George G. Latta and Hugh Maxwell state that while they were in nowise parties to said lease and had no knowledge of it at the time of purchase, yet they believe there was a lease executed by the said J. W. Kimbell, but said lease was to cease and determine after the decision of the court should decide the title to the Hot Springs reservation, which decision of the Supreme Court of the United States was rendered on the 24th day of April,
21 1876, whereby said quarter section was decided to be the property of the United States and not the property of the said William H. and Maria Gaines; that when said decision was rendered the plaintiff never demanded of any one rent for said tract of land after said 24th April, 1876, and no rent was paid after said date; that said plaintiff in person and by his authorized agents stated to defendant Kimbell that if defendant would pay up rents to said date as aforesaid, which rents were then in arrears, that plaintiff William H. would have no further claim upon them.

That *plaintiff*, in June, 1876, when the receiver of the Hot Springs reservation appointed on behalf of the United States by the Court of Claims took charge of the Hot Springs reservation, the said plaintiffs William H. Gaines gave said receiver a list containing the names of those who were formerly his tenants and who had
22 paid him rent, and requested him to take possession of the lands so occupied by said tenants, and particularly the tract of land leased to said defendant, J. W. Kimbell; that said plaintiff, William H. Gaines, made no effort to carry out his obligations to the defendant J. W. Kimbell or to keep his covenant contained in said lease, that defendant should have the right to remove his improvements, as provided by said lease; that the plaintiff, on the contrary, urged said receiver to take charge of said improvements and urged all of his tenants to lease the tract of land held by each of said tenants from said receiver and to relieve plaintiff from all liability by reason of their eviction and the breach of the said stipulations of the said lease, assuring them that if they would do so he would assist them

to acquire the title from the United States in their own right; that — unwillingly agreed to this after repeated declarations and assurances on the part of plaintiff, and rented the house and land at a greatly
23 advanced rent from said receiver on the first day of June, A. D. 1876; that the defendant was deprived of his right as against plaintiffs to remove the improvements from said land, they being ascertained by said decision to be the property of the United States; that said plaintiffs wholly failed and refused to perform such stipulations as to protect defendant in said right of removal as aforesaid; that, as against plaintiffs, defendants had the right to remove said improvements, their term being in full force as to them; that if said improvements had been removed and the plaintiffs had filed a claim before said commissioners for said lot it would have been destitute of any foundation whatever. The defendants further say that after said award to said defendant, Kimbell, the plaintiffs openly declared that they would never make any claim to said lot or any other claim antagonistic to any award made by said
24 Hot Springs commissioners, but would abide and acquiesce in them and remain satisfied and content with what said commissioners had awarded to them, and that when an effort was making to procure legislation by Congress authorizing a revision by this court or the Land Department of the decisions of said commissioners, which occurred in the latter part of the year 1879 and the early part of the year 1880, they vigorously opposed the same and insisted, in public meetings held on said quarter section, that said decisions were right and ought never to be disturbed, and that it would be ruinous to disturb them if it could be done; and they also told persons applying to them in reference to property at Hot Springs that the titles to said property were finally settled, and that they would never sue for or claim any part of said quarter section which had been awarded to others, whereby their views and inten-
25 tions, as expressed, became generally known to the occupants and residents of said reservation and to these defendants in particular; that plaintiffs never complained of said award nor put anything upon the record or elsewhere to indicate that they had any claim or right to or against said lot, but acquiesced in the same until the 23rd of May, 1884, when they instituted this suit against the defendants. Defendant states that a period of more than seven years has elapsed between the commencement of this suit and the first day of June, 1876. This date the defendant attorned to the United States, and by the statutes of Arkansas this suit is barred, and that from the fourth day of June, 1876, to the 23rd day of May, 1884, the date of the institution of this suit, the defendants have not recognized plaintiff as their landlord, and during all this time defendants have had and held possession of said
26 lot adversely, notoriously, and as against plaintiff and all persons, and no action was commenced against either by plaintiffs; that on the 22nd day of October, 1879, some time after said commissioners had awarded said tract of land to the said Kimbell, one W. A. Moore and the defendant George G. Latta bought said lot from defendant Kimbell at the price of $2,000.00, and said

purchase was made without any knowledge whatever of any claim in plaintiffs or of the alleged lease or its terms. They had never seen or heard of the contest before said commissioners or of the evidence taken in said claims, and that it was not accessible to them; that, believing that there was nothing, either in law or equity, against it, *that* they purchased said lot from said Kimbell and paid for it, and erected thereon a large three-story house worth at least three thousand dollars; building is now on — lot and is in good condition; that no rent has ever been demanded by plain-
27 tiffs of these defendants for said lot; that they obtained from said Kimbell a deed for said lot, a copy of which is annexed to this answer and made a part thereof and marked "Exhibit X;" that the defendant Hugh L. Maxwell afterwards, on the 24th day of March, 1882, purchased the undivided one-half interest of W. A. Moore in said tract of land; that said lot was purchased from S. W. Fordyce, the assignee of W. A. Moore, the said Moore having previously made an assignment in which S. W. Fordyce was appointed the assignee; that said interest of W. A. Moore was sold by the said assignee as aforesaid under the direction and order of the United States court for the eastern district of Arkansas, and that the said defendant, Maxwell, had no notice, either actual or constructive, of any claim or right of the said plaintiffs to said tract
28 of land, and that the said Maxwell was a non-resident of the State of Arkansas and a resident of the State of New York, and knew nothing about the pretended right of plaintiffs or anything connected thereof.

The defendants further say that they owe plaintiffs no rent whatever; that the defendants Latta and Maxwell own the improvements on the said lot, of the value of $3,000.00, which were built and made thereon when it belonged to —— ——, after-purchased from Joseph W. Kimbell, and that they ask that they be required to pay no rent, but if it be held after a full hearing herein that plaintiffs are entitled to said lot, that plaintiffs be required to pay them for their improvements, and that the sum due or ascertained be decreed a lien on said lot and enforced as such.

And defendants, while answering herein, in nowise with-
29 draw their demurrer filed herein, but insist that the grounds alleged in said demurrer are good, and that said demurrer should be sustained.

Wherefore they pray that the complaint may be dismissed, and that they may have proper decrees rendered herein, & that costs may be awarded them, and for all other general & special relief to which they are entitled they will ever ask and pray.

GEO. G. LATTA,
Att'y for Def't.

[Endorsed:] No. 641. William H. Gaines *et al. vs.* J. W. Kimbell, George G. Latta, and Hugh L. Maxwell. Answer. Filed August 7, 1884. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

30 Which exhibit to answer is in the words and figures following to wit:

31 EXHIBIT "X" TO ANSWER OF DEFENDANT.

Know all men by these presents that we, J. W. Kimbell and Hattie Kimbell, his wife, for and in consideration of the sum of two thousand dollars to us in hand paid by George G. Latta and W. A. Moore, do hereby grant, sell, and quitclaim unto the said George G. Latta and W. A. Moore, and unto *his* heirs and assigns forever, the following lands, lying in the county of Garland and State of Arkansas, to wit:

Lot number nine (9), lying in block number one hundred and thirty (130), according to the plat and survey of the United States Hot Springs Commission, the said lot being the same as awarded to me under my petition No. 586, as filed with the United States Hot Springs Commission:

To have and to hold the same unto the said George G.
32 Latta and W. A. Moore, and unto their heirs and assigns forever, with all appurtenances therewith belonging, hereby warranting and defending the same to the said George G. Latta and W. A. Moore, their heirs and assigns forever, against all lawful claims and against any valid liens that may now exist upon said lot and premises, but against none other.

And I, Hattie S. Kimbell, wife of the said J. W. Kimbell, for and in consideration of the said sum of money, do hereby release and relinquish unto the said George G. Latta and W. A. Moore all my right of dower in and to said lands.

Witness our hands and seals on this 29 day of October, 1879.

JOSEPH W. KIMBELL. [SEAL.]
HATTIE S. KIMBELL. [SEAL.]

STATE OF ILLINOIS,
County of Sangamon, } *ss:*

Be it remembered that on this day came before the under-
33 signed, a notary public within and for the county aforesaid, duly commissioned and acting, J. W. Kimbell, to me well known as the grantor in the foregoing deed, and stated he had executed the same for the consideration and purposes therein mentioned and set forth; and on the same day also voluntarily appeared before me the said Hattie S. Kimbell, wife of the said J. W. Kimball, to me well known, and, in the absence of her said husband, declared that she had, of her own free will, signed and sealed the relinquishment of dower in the foregoing deed for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such notary public on this 29th day of October, 1879.

J. JONES,
Notary Public.

STATE OF ARKANSAS, }
County of Garland. }

I, J. H. Law, county clerk and *ex officio* recorder for the
34 county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 1st day of November, A. D. 1879, at 9 o'clock a. m., and the same is now duly recorded, with the acknowledgements and certificates thereon, in Record Book D, page- 435 & 436.

In witness whereof I have hereunto set my hands and affixed the seal of said court this 4th day of November, 1879.

J. H. LAW,
County Clerk and ex Officio Recorder.

No. 641. William H. Gaines *et al. vs.* J. W. Kimbell, George G. Latta, & Hugh Maxwell. Exhibit "X" to answer.

35 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27 day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On December 1, 1884:

The plaintiffs, by M. W. Benjamin, Esq., their solicitor, ask leave to amend their complaint by interlineation, which is granted; and thereupon said amendments are made.

And on December 4, 1884, as follows:

Come the defendants, by Geo. G. Latta, Esq., their solicitor, and on motion of said solicitor leave is given them for fifteen days to file answer to amended bill herein.

The following separate answer appears in the papers:

36 In the United States Circuit Court for the Eastern District of Arkansas.

WM. H. GAINES and MARIA GAINES, His Wife, Plaintiffs, *against* J. W. KIMBALL, GEORGE G. LATTA, and HUGH MAXWELL, Defendants. } In Chancery.

Answer of Hugh L. Maxwell.

Comes Hugh Maxwell, leave of the court first being had, and for answer to the complaint herein says that on the 10th day of May, 1882, the United States, by patent duly issued and delivered, transferred and conveyed lot number nine (9), in block number one hun-

dred and thirty (130), in the Hot Springs reservation, to one J. W. Kimball.

That in the month of April, 1876, before the date of issuance of said patent, the Supreme Court of the United States, in an action in which the plaintiffs herein, as well as H. M. Rector and
37 John C. Hale, Senior, were parties, and in which the question as to the title of said lot as aforesaid, together with a large number of other lots, was in controversy, the said Supreme Court adjudged and determined that the title to the same was in the United States.

The defendant Maxwell further states that in the month of ——, 18—, some time after the United States Hot Springs commissioners had awarded said tract of land to J. W. Kimball, the said Kimball transferred, sold, and conveyed the said tract of land to W. A. Moore and George G. Latta and, as defendant is informed and believes, received from the said Moore and Latta the sum of two thousand ($2,000.00) dollars for the same, and that said purchase was made without any knowledge whatever of any claim in plaintiffs or of the alleged lease or its terms.

38 That they obtained from said Kimball a deed for said lot, a copy of which is annexed to this answer and made a part hereof and marked "Exhibit A."

That the said W. A. Moore was engaged in the mercantile business in the city of Hot Springs and some time after said purchase became involved in business, and all of his estate and property was turned over and placed under the control of S. W. Fordyce as assignee.

That Moore's one-half interest in the said lot sued for in this action was a portion of the real estate turned over to said assignee.

That under and by the direction and order of the United States — court for the eastern district of Arkansas the said assignee was required to sell the undivided one-half interest of said Moore in said lot at private sale.

That the said assignee, S. W. Fordyce, solicited the defend-
39 ant Maxwell to purchase the same.

That defendant finally concluded to become the purchaser thereof, and that on the 24th day of March, 1882, after the issue and delivery of the patent aforesaid, he purchased of the said S. W. Fordyce the said undivided one-half interest of said Moore in said lot, paying the said Fordyce, the said assignee, therefor the sum of three thousand dollars ($3,000.00).

That the said assignee, on the 24th day of March, 1882, conveyed the said lot as aforesaid by deed, which said deed was duly recorded in the recorder's office of Garland county in Record Book H, page 458, and a copy of the same is hereto attached, marked "Exhibit B," and made a part hereof.

The defendant states that at the time of his purchase of the said interest in said lot from said assignee there was erected thereon
40 a large two-story house, which building, as defendant is informed and believes, was placed thereon by the said Moore and Latta at a cost of three thousand dollars, and that said building

is now on said lot and is in good condition, and at no time has plaintiff demanded rent of defendant. The defendant Maxwell denies that at the time he purchased the said interest in said lot as aforesaid he had full knowledge of the lease and the tenancy thereunder, as set forth in said complaint, and that he knew all the terms and conditions of said lease and of plaintiffs' right thereto or of the judgments therein mentioned.

And defendant alleges and avers that he is an innocent purchaser for complete and full value of the aforesaid one-half interest in said lots; that he became the purchaser thereof in good faith, paying therefor what was then and is now regarded as full
41 value, relying at the time of said purchase upon the patent issued by the United States Government, having no doubt and fully believing that the United States was the owner of said land at the time of the delivery of said patent and had full power to dispose of the same in the manner therein indicated.

The defendant denies that he knew of the evidence and records which had been submitted to the Hot Springs U. S. commissioners at the time he made his said purchase as aforesaid, and alleges and avers that he knew nothing of them or about them until after the commencement of this suit.

And defendant states that he is a resident of the State of New York, and was a resident of said State at the time of said purchase and knew nothing whatever about the Hot Springs litigation or anything about the matters pending before the Hot Springs
42 United States commissioners or anything pertaining thereto.

Wherefore defendant prays that said bill may be dismissed, and that he may have costs herein, and for other proper relief.

GEORGE G. LATTA,
Solicitor for Defendant.

No. 641. William H. Gaines and Maria Gaines *versus* J. W. Kimball, George G. Latta, Hugh L. Maxwell. Separate answer of Hugh L. Maxwell. In the United States circuit court for the eastern district of Arkansas.

43 And on January 5, 1885, as follows:

Comes the complainant-, by M. W. Benjamin and R. G. Davies, Esqrs., their solicitors, and file herein their replication to defendant's answer; which replication is in the words and figures following, to wit:

44 United States Circuit Court, Eastern District of Arkansas, October Term, 1884.

WILLIAM H. GAINES & WIFE
vs.
J. W. KIMBALL *et al.*

The said plaintiffs say that their bill is true and that defendant's answers as set forth are not true, and this they are ready to verify.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

Filed January 5, 1885.

RALPH L. GOODRICH, *Clerk.*

45 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 20, 1886:-

Come the complainants, by M. W. Benjamin and R. G. Davies, Esqrs., their solicitors, and come the defendants, by Geo. G. Latta, Esq., their solicitor, and this cause is submitted to the court upon the pleadings and evidence, and by agreement of parties it is ordered that the complainants have fifteen days and the defendants thirty days thereafter in which to file abstracts, and thereafter the complainants to have ten days and the defendants ten days thereafter in which to file briefs, and that five days thereafter be given for reply. It is further ordered that each party serve upon the opposing parties copies of abstracts and briefs.

46 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 24th day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On November 8, 1887:

Now, on this date, this cause coming on to be heard upon the complaint of plaintiffs, the answer of defendant Geo. G. Latta, and the replication to said answer and the evidence, and the court having heard the argument of counsel and being now sufficiently advised in the matter as to the proper decree to render herein, the court finds that the board of commissioners mentioned in said complaint, by error and mistake of law, awarded the right to purchase lot nine (9), in block one hundred and thirty (130), of the Hot Springs reservation, in the city of Hot Springs, Garland county, Arkan-
47 sas, to J. W. Kimball and issued to him, the said Kimball, a certificate of award, and that, in accordance with said erroneous ruling, a patent has been issued improperly to said Kimball for said lot, and that Geo. G. Latta purchased an undivided half interest of said Kimball in said lot before said award was made and while the same was pending before the said commission.

And the court is of the opinion that George G. Latta holds said undivided half interest in said lot and patent for the sole use of said William H. Gaines and Maria Gaines. It is therefore considered, ordered, and adjudged and decreed that all right, title, interest, and estate of Geo. G. Latta in and to said lot be, and the same is hereby, divested out of said defendant and vested in plaintiffs and their heirs and assigns forever, and defendant prays an appeal, which is granted by the court.

48 And it is further ordered that this cause be referred to N. W. Cox, special master of this court, who is directed to ascertain and report to the court at its next term—

1st. The value of the rent of said lot since said award of said commission.

2d. The taxes paid since said award.

3d. The value of the improvements made upon said lot before and since the award, and report thereon separately.

And said master may examine witnesses touching said matter, and shall reduce the same to writing and report their testimony so taken to the court; and it is further ordered that all questions of law touching the several matters herein referred to the master be, and the same are, reserved until the coming in of his report, and this case is reserved for further directions.

And the court finds from the evidence adduced that the undivided half of the lot in controversy is at this date of the value of

49 six thousand dollars; and, upon motion of complainants' solicitors, it is ordered that this cause be dismissed as to J. W. Kimball and Hugh Maxwell.

And on March 10, 1888, as follows:

Comes N. W. Cox, master herein, and files his report; which report is in the words and figures following, to wit:

50 In the U. S. Circuit Court for the Eastern Dist. of Arkansas.

WM. H. GAINES & WIFE, Pl'ffs,
vs.
J. W. KIMBELL, GEO. G. LATTA, and HUGH MAXWELL, D'f'ts.

To the honorable circuit court of the United States for the eastern district of Arkansas:

In compliance with the decree of this honorable court made November 8th, 1887, I have enquired into the matters therein required, and the result thereof will be found below.

The parties did not present testimony in accordance with the present reading of the decree herein, but in accordance with the rulings of the honorable court made at its last term in similar cases. The testimony taken in such investigation is hereto attached and made a part of this report.

By the agreement of the parties the width of said lot 9, block 130, is 27½ feet.

	The rent thereon under the lease from the date of the award, Dec. 9, 1879, to the date of the filing of the		
51	complaint herein, May 23, 1884—4 yr-. 5 mos. & 14 days, at $10 per front foot per annum, would be-		$1,225 51
	Interest thereon—6 yrs. 17 days, to M'ch 8, '88		444 65
	Rent from May 23, '84, to Nov. 8, '87, date of decree, at $10 per front foot per annum		941 28
	Interest on same, 2 yr-. 23 days, av.		116 55
	Rent of lot and improvements to M'ch 8, '88—4 mos., at $60 per mo.		240 00
			$2,967 99
	Amount over		$2,967 99

The defendants are entitled to the following credits:

Am't paid U. S. Gov't for lot	$220 00	
Interest from Jan'y 1, 1882, to M'ch 8, 1888, @ 6%, 6 — 3 m. 8 days	83 32	
Taxes paid State, Co., & city, '82, '3, '4, '5, '6, less dis. on ac. scrip, 15%	277 23	
Int. on same, av. 3 yrs., 6%	49 90	
Improvement tax, '85, '6, '7, @ $30.40	91 20	
Interest on same, 2 yrs., av.	7 35	
Sewer connections	60 00	
Int. on same	7 20	
Grading tax (no date)	34 37	
Am't for improvement	2,000 00	
	$2,830 57	$2,967 99
One-half of these am'ts would be	$1,415 28	$1,483 99

52 The difference due pl'ff on one-half of the lot ---- $34 35

Respectfully submitted,

N. W. COX,
Special Master.

53 In the U. S. Circuit Court for Eastern District of Arkansas.

WM. H. GAINES & WIFE
vs.
J. W. KIMBELL, GEO. G. LATTA, & HUGH MAXWELL.

Depositions of witness- in above case taken before N. W. Cox, special master, at the office of R. G. Davies, Esq., in the city of Hot Springs, Ark., on the 13th day of February, 1888.

Present: The plaintiffs, by R. G. Davies, Esq., their attorney, and the defendants, by George G. Latta, Esq., their attorney.

WILLIAM H. GAINES, being introduced upon the part of the plaintiffs and duly sworn, says:

Ques. 1. State your name, age, and residence and whether you are one of the plaintiffs in this cause.

Ans. My name is William H. Gaines; of lawful age; residence, Hot Springs, and am one of the plaintiffs in this cause.

Ques. 2. What did you lease the lot in controversy at per front foot?

Ans. Ten dollars per foot.

54 Ques. 3. Has the property increased or decreased in value since that time?

Ans. Decreased.

WILLIAM H. GAINES.

A. B. GAINES, being introduced upon the part of the plaintiffs and duly sworn, says to—

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is A. B. Gaines; age, 30 years; residence, Hot Springs; occupation, real-estate dealer, &c.

Ques. 2. State if you are familiar with the rental value of ground in Hot Springs since the date of the bringing of this suit—May 23, 1884.

Ans. I am.

Ques. 3. What is it per front foot upon lot 9, in block 130—the lot in controversy in this cause—from that date to the date of the decree in this cause—November 8th, 1887?

Ans. About twelve and $\frac{50}{100}$ dollars per front foot per annum.

55 Ques. 4. What is the rental value of the ground, with the improvements, now and since that time?

A. I should say about seventy-five dollars per month.

Cross-examination by G. G. LATTA:

Ques. 5. Is the lot that is fifty-five feet deep worth as much in the same locality as a lot that is ninety-two feet deep—that is, per front foot?

Ans. Not if they were located side by side and the same advantages attached to both lots.

Ques. 6. Does property on the west side of the streets, in the neighborhood of this property, or on the east side, rent for the most money? Which property?

Ans. I should say the west side, though there is not much difference in this special locality.

Ques. 7. Is this property on the east or west side of Central avenue?

Ans. On the east side.

56 Ques. 8. You state that this property is worth twelve and a half dollars per front foot. Are you familiar with the property in block 89, where the Hale block now stands and which is one hundred and seventy feet deep, and do you regard this prop-

erty worth as much per front foot as that, considering the location, amounts received for rents, &c.?

Ans. I am familiar with the property, but not with the depth of the same. I do not consider it worth so much as the Hale property per front foot.

Ques. 9. You state that this property is worth since the decree seventy-five dollars per month. Isn't it a fact that you rent property that is more desirably located and better improved and on a a more desirable side of the street for less money?

Ans. I do not think so; not the same amount.

Ques. 10. What do you get per month for the property where Cohen's furniture store is, from November 8th, 1887?

Ans. Seventy-five dollars per month.

Ques. 11. What does this include?

Ans. Includes a store, which, I think, is about 31 feet wide
57 by 100 feet in depth; a large room down-stairs and one large room in the second story.

Ques. 12. Isn't it a fact that the building that you have testified about never has rented for seventy-five dollars a month since the parties who now have it in possession have owned it?

Ans. I do not know what it has rented for.

Ques. 13. Don't you think that you have placed that rental value at a pretty high figure, and in fact at a greater figure than it has rented for during the period which you have testified to, when you consider the rental values you receive from other property in that locality?

Ans. I don't think so. I have rented a building in the same block, but lower down, 44 feet by about 70 feet, two stories high, for one hundred and fifty dollars per month—that is, since last November.

Ques. 14. Don't you think that the parties who have had
58 control of the property since last November are men of such business tact and judgment that they would get out of it, for rent or otherwise, as much as you would or any other business man handling real estate?

Ans. I should say that they would.

Ques. 15. If, then, the parties who have had control of it have not been able to realize seventy-five dollars per month, do you think the rental value that you have given could have been obtained therefor or therefrom?

Ans. I should say, as I have said before, that, in my opinion, the property is worth about seventy-five dollars per month. This is my judgment and opinion. As to what they could have obtained I can't say. They are good business men.

Ques. 16. You have rented, as trustee and agent for William H. and Maria Gaines for several years, a large number of frame buildings in Hot Springs, Arkansas, and don't you find it very expensive to keep in repair and keep up that character of building so
59 as to make them tenantable and acceptable to tenants?

Ans. I have always adopted as a rule to require tenants to make their own repairs.

Ques. 17. Then you have not had to make repairs upon frame buildings of this kind?

Ans. I have had to make some, but not many. A man that did not require the tenants to do this would be in a bad row.

Ques. 18. What is your relation with the plaintiffs William H. and Maria Gaines?

A. I am a son.

A. B. GAINES.

C. N. RIX, being introduced upon the part of the plaintiffs and duly sworn, says to—

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is C. N. Rix; age, 45 years; residence, Hot Springs; occupation, banker.

Ques. 2. State if you are familiar with the rental value of ground in Hot Springs since the date of bringing this suit, May 23, 1884.

60 Ans. Somewhat so.

Ques. 3. What is it per foot upon lot 9, block 130—the lot in controversy in this suit—from that date to the date of the decree in this cause, November 8th, 1887?

Ans. Eighteen to twenty dollars per month for that sized lot.

Ques. 4. What is the rental value of the ground, with the improvements, now and since that time?

Ans. From fifty to eighty-five dollars per month.

CHAS. N. RIX.

—— VAN PATTEN, being introduced upon the part of plaintiffs and duly sworn, says to—

Ques. 1. State your name, age, residence, and occupation.

A. My name is S. P. Van Patten; age, 33 years; residence, Hot Springs, Ark.; occupation, —.

Ques. 2. What is the present value of the improvements on lot 9, block 130, city of Hot Springs?

Ans. Two thousand dollars.

S. P. VAN PATTEN.

61 P. J. LEDWIDGE, being introduced upon the part of the plaintiffs and duly sworn, says to—

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is P. J. Ledwidge; age, 45 years; residence, Hot Springs, Ark.; occupation, contractor and builder.

Ques. 2. What is the present value of the improvements upon lot 9, in block 130, city of Hot Springs?

Ans. Two thousand dollars.

P. J. LEDWIDGE.

J. P. MELLARD, being introduced upon the part of the defendants and duly sworn, says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is J. P. Mellard; age, 50 years; residence, Hot Springs, Ark.; occupation, real-estate agent.

Ques. 2. Are you familiar with the building on lot 9, in block 130, and what is the rental value of the same since November 8th, 1887?

62 Ans. I am. The rental value is seventy dollars per month gross, and that is the most ever received for it. I have done the collecting for the owners.

Ques. 3. What would be a fair rental value net per month for that property?

Ans. From fifty-five to sixty dollars per month. I don't think that it would be over fifty-five dollars. The owners paid for all repairs and not the tenants. I make the same statement in regard to improvements and the cost of the same as made in regard to the Clever lot, as one contract was generally made for the whole property and then prorated, and this lot is $27\frac{6}{12}$ feet in width.

J. P. MELLARD.

Statement of G. G. Latta.

The improvement tax for 1885, 1886, 1887, lot 8, block 130, was $34.00 each year.

Lot 9, block 130, same tax for same period, $30.40 each year.

Lot 10, block 130, same tax for same period, $25.00 each year.

63 In addition to this is to be added the city tax, which tax does not appear upon the books of the county collector and was collected by the city collector (special).

There was expended upon the three lots, 8, 9, & 10, block 130, for building sidewalks and rock foundations—

For lot	8,	$2.25	per foot	$72 00
"	9,	"	"	60 86
"	10,	"	"	54 00

There was expended for grading these lots—

For lot	8,	$1.25	per ft., 32 ft.	$40 00
"	9,	"	" 27.6	34 39
"	10,	"	" 24	30 00

I paid in addition to that for rock pillars on lot 9, in rear of the building, $23.00.

There was also expended for connection with the water works $180, $60 of which was chargeable to each lot, 8, 9, and 10, and a further sum of $18 was chargeable alone to lot 8, block 130.

I will state that I came into possession of a one-half interest in lot 8, block 130, on the 1st day of March, 1881, and prior
64 to that date I had no interest and am not chargeable with any rents prior to that date.

We have expended a great deal of money on this property in improving it and keeping it in repairs.

A fair rental value per front foot for lot 9, block 130, from May

23d, 1884, to the date of the decree, November 8, 1887, would be about seven to eight dollars per front foot per annum.

A fair rental value of the ground, with the improvements, since said decree would be from thirty to forty dollars per month. A statement of account of that property from March 15, 1887, to December 21, 1887, shows that I have received out of that $239.58, and out of this has not been paid the taxes for the city, county, or State or for improvements. For that period my one-half of the receipts for that property would be less than two hundred dollars.
65 We have kept the properties in repair ourselves, and have kept an itemized account of all repairs and payments and an account of the receipts, and the statement I have made above is a liberal statement of the rental value of that property.

As to ground rents, lot 9, block 130, I consider eight dollars per front foot for a lot of this depth and frontal a good price for the period mentioned, and a fair rental value of said property since the decree would be fifty dollars per month. I have looked over my accounts and find that this property, at any time when at its best, the whole building, rented for more than seventy dollars. Out of this are to be taken the taxes and the repairs on the same. I will state that the repairs on frame buildings have to be made monthly
' and are very expensive to keep up. I consider, after looking
66 over my receipts from this property, that fifty dollars per month from the date of the decree is a fair rental value for the same, and that is all that it has netted the owners.

I came into the possession of this property—or rather one-half of the same—in 1880.

As to lot 10, block 130, I consider, at a big rental value for grounds, that this ground is worth about seven dollars per front foot, as this lot is narrow and only about fifty feet deep. A fair rental value since the decree would be about thirty-five dollars a month. It is a one-story building, and, considering the expense in keeping this up, that is a high rent for it. I have ascertained that the city taxes for the year 1882 and not included in statement of county clerk — ---------- $17 50
On lot 9 for same time ---------- 17 50
" 10 " " ---------- 15 00

In conclusion I desire to say that the ground rent and the rental value is excessive and is more than the property has actually
67 yielded with the very best business care and attention. I have personal knowledge of the receipts and disbursements in reference to this property and know that the statements I have given are a very fair and just valuation. I think the valuation of $12.50 per front foot placed on same by A. B. Gaines will not be borne out by the renting of my property in the last four or five years in Hot Springs. The ground rent last year was as high and as valuable as at any time within the last ten years. A lot that is twenty feet front and one hundred and seventy-five deep and is now improved by a fine brick building which is 90 feet deep I leased last year, as agent and attorney, to Ed. Hogaboom for $12.50 per

front foot on a lease of ten years. This lot is in the heart of the city,
and the rents in that locality are forty per cent. higher than
68 where this property is situated. This lot laid vacant for several months before I could get a tenant at that rate. If the houses on these lots were torn down to-day and the ground offered for lease no business man in Hot Springs who would want to realize upon his investment could afford to pay more than seven or eight dollars per front foot per annum lease. I have built a good many frame and several brick buildings in Hot Springs and know whereof I speak, and I know that if any man paid higher leased ground rent than that he could not realize ten per cent. upon his investment. This has been my universal estimate placed upon the value of ground rent, and a business calculation will show that I am right.

Cross-examination by R. G. DAVIES:

Ques. 1. What is the value per front foot of the several lots without improvements?

Ans. I consider, taking the lots in their width & depth,
69 that from seven to eight dollars per *per* front foot per annum a good rental value, & that is as much as I would pay if they were offered to me now on a ten years' lease, and any one who will sit down and calculate it and get the estimates that are necessary will find that these figures are right and all that any business man would or could pay.

GEORGE G. LATTA.

70 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of April, anno Domini one thousand eight hundred and eighty-eight, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 19, 1888:

Come- the defendant George G. Latta and files herein his exceptions to report of master; which exceptions are in the words and figures following, to wit:

71 In the United States Circuit Court for the Eastern District of Arkansas.

WM. H. GAINES and WIFE, Plaintiffs, *vs.* J. W. KIMBELL, GEO. G. LATTA, and HUGH MAXWELL, Defendants.	Exceptions to Report of Master.

Comes George G. Latta and excepts to the report of N. W. Cox, special master, as filed in this cause, and for grounds of exception states—

First. That he excepts to the item of $1,225.51 because the same is excessive and is based upon an instrument that has no validity and is not binding upon the parties to this cause.

Second. That he excepts to the item of $444.65 because if said item were correct upon which interest is calculated the calculation of interest as to time is not correct.

Third. That he excepts to the item of $941.28 because the same is not borne out by the testimony.

That a preponderance of testimony taken before the master
72 shows that the ground rent was not worth ten dollars per front foot, as this lot in controversy was a lot having only a depth of fifty feet.

The testimony in this is that the property is only worth a ground rental to seven or eight dollars per front foot.

Fourth. He excepts to the item of $116.55 as being interest on the same.

Fifth. That he excepts to the item of $240.00 because the same is not borne out by the testimony before the master. The rent of lot and improvements from November 8th, 1887, is fixed at sixty dollars per month. The testimony shows that this property, at a high rental valuation, is worth only fifty dollars per month. The testimony of Mellard, Rix, and Latta proves this the proper rental. The only witness who testified before the master as to this high rental is A. B. Gaines, who is a son of the plaintiffs and interested in having
73 the highest rental value fixed. The testimony of Mellard is that out of the rents all of the repairs on the property had to be paid, and that a rental value of the property would be about fifty to fifty-five dollars per month. This is corroborated by Rix and Latta.

Sixth. The master has failed to give a credit for building sidewalks and rock foundations—$60.86—which item of credits is found in the testimony of Latta, and is a proper credit. This the master has overlooked and failed to place to the credit of defendant.

Seventh. The master has failed to give a credit of twenty-three dollars for rock pillars in rear of the build-, which item was not considered in the other credits given the defendant.

Eighth. In this case the master has made the division correctly between the debits and credits, according to his items, as he has
74 stated them, and he leaves the defendant in debt for one-half of lot, $34.35; but the finding should be in favor of the defendant if he had omitted the two credits of $60.86 and $23.00, admitting that his basis for ground rent and monthly rental of property was correct, which we do not concede. There should be a judgment and finding in favor of the defendants on the testimony before the master in this cause.

And defendant asks that his exceptions be noted and considered, and that the master's report be corrected in the several particulars as above set forth.

GEORGE G. LATTA, *For Self.*

Filed April 19, 1888.

RALPH L. GOODRICH, *Clerk.*

75 And on April 21, 1888, as follows:

Come the complainants, by M. W. Benjamin, their solicitor, and come the defendants, by G. G. Latta, Esq., their solicitor, and file herein their agreement as to testimony; which agreement is in the words and figures following, to wit:

76 In the United States Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES, Pl'fs, *vs.* J. W. KIMBALL — GEO. G. LATTA, Defendants. } Agreement as to Testimony.

It is agreed by and between the plaintiffs and the defendants that the testimony taken in the cases of, No. 632, Wm. H. Gaines & Wife *vs.* Helfrich; No. 633, Wm. H. Gaines & Wife *vs.* B. Schicker; No. 639, Wm. H. Gaines & Wife *vs.* Charlotte Cohn; No. 651, Wm. H. Gaines & Wife *vs.* Morris Muscowitz, James A. Smith, and Jennie Smith; No. 650, Wm. H. Gaines & Wife *vs.* Finnie & Scoggins, all of said cases being in this court, shall be taken and considered as the testimony in this case, and this agreement is made for the purpose of allowing and securing to plaintiffs and defendants the benefit of said testimony in the court and on appeal to the Supreme Court of the United States.

M. W. BENJAMIN,
Counsel for Plaintiffs.
GEO. G. LATTA,
Att'y for Def'ts.

Filed April, 1888.

RALPH L. GOODRICH, *Clerk.*

77 And on the final hearing the following depositions and proofs:

78 And on April 21, 1888, as follows:

Now, on this day, comes the said plaintiffs, by their solicitors, M. W. Benjamin and R. G. Davies and U. M. & G. B. Rose, and also comes the said defendant, G. G. Latta, by Geo. G. Latta, Esq., his solicitor; and the special master having heretofore filed his report herein, and this case now coming on for hearing, and the court having heard the argument of counsel and being now sufficiently advised as to the further decree to render herein, it is ordered, adjudged, and decreed that all the exceptions of the defendant to the master's report be, and the same are, overruled; to which ruling defendant excepted; and thereupon the court finds and states the account between the plaintiffs and defendant as follows:

To amount due said plaintiffs for rent according to the terms of the lease from the date of award to the date of the filing of
79 the bill in this case and interest, $1,670.16.

To amount due him since said date and until the filing of the master's report, rental value of the property and interest, $1,057.83.

To amount of rent to date of decree, $240.00, amounting in the aggregate to the sum of $2,967.99.

By amount due the defendant for taxes paid and interest, $664.07.

By amount of purchase-money paid by him to Government for said lot and interest, $303.32.

By present value of the improvements, $2,000, which said sums amount in the aggregate to $2,967.99, from which take —, as above; leaves the sum of nothing.

And it is ordered and decreed that the said plaintiffs do have and recover from said defendants the possession of the undivided half of said lot nine (9), block one hundred and thirty (130), and that a writ of possession issue—and serving a copy of this decree
80 shall be the writ—and that they have execution for all costs of suit.

It is further ordered that N. W. Cox be allowed the sum of one hundred dollars for his services as special master herein.

And the defendant prays an appeal to the Supreme Court, which is granted; and it is ordered that upon his executing and filing a bond within the time and — conditions as prescribed by law in the sum of fifteen hundred dollars and cost bond for two hundred and fifty dollars, with good, approved security, the decree be superseded pending said appeal.

And on June 2, 1888, as follows:

Comes the defendant Geo. G. Latta and files herein his supersedeas and cost bond-, which are approved by the court; which bonds are as follows:

81 No. 641.

In the United States Circuit Court.

WILLIAM H. GAINES & WIFE, Plaintiffs,
vs.
J. W. KIMBALL *et al.*, Defendants. } Bond for Appeal.

Know all men by these presents that we, George G. Latta and S. W. Fordyce, are held and firmly bound unto Wm. H. and Maria Gaines in the sum of $250, to be paid to the said William H. and Maria Gaines, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 9th day of May, A. D. 1888.

Whereas the above-named George G. Latta has prayed an appeal to the Supreme Court of the United States from a decree rendered in the above-entitled action by the circuit court of the
82 United States in favor of William H. and Maria Gaines:

Now, therefore, the condition of this obligation is such that if the above-named George G. Latta shall prosecute his appeal to effect and answer — if he shall fail to make his appeal good, then

this obligation shall be void; otherwise to remain in full force and effect.

GEORGE G. LATTA.

S. W. Fordyce, being duly sworn, deposes and says he is worth the sum of $— over and above all his just debts, liabilities, and legal exemptions.

Filed June 2, 1888.

RALPH L. GOODRICH, *Clerk.*

83 No. 641.

In the United States Circuit C't.

WM. H. GAINES and WIFE, Plaintiffs, *vs.* J. W. KIMBALL *et al.*, Defendants. } Bond for Costs.

Know all men by these presents that we, George G. Latta and S. W. Fordyce, are held and firmly bound unto Wm. H. and Maria Gaines in the sum of $1,500, to be paid to the said William H. and Maria Gaines, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 9th day of May, A. D. 1888.

Whereas the above-named George G. Latta has prayed an appeal to the Supreme Court of the United States from a decree rendered in the above-entitled action by the circuit court of the United
84 States for the eastern district of Arkansas, divesting him of the title to lot 9, block one hundred and thirty, in the Hot Springs reservation, in Arkansas, and vesting it in William H. Gaines and Maria Gaines and adjudging and decreeing him to pay them the sum of $— and costs of this suit, but permitting him to supersede the judgment for said sum of money upon giving bond in the sum of $1,500, together with a cost bond, which cost bond has been given and will be filed at the same time with this:

Now, therefore, the condition of this obligation is such that if the above-named George G. Latta shall prosecute his appeal to effect and answer all damages which may arise from the superseding of said judgment for said sum of money and all costs if he shall fail to make his appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

GEORGE G. LATTA.

85–316 S. W. Fordyce, being duly sworn, deposes and says he is worth the sum of $— over and above all his just debts, liabilities, and legal exemptions.

Filed June 2nd, 1888.

RALPH L. GOODRICH, *Clerk.*

* * * * * * *

317 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this 5th day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and thirteenth.

Attest:

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

318 In the Supreme Court of the United States.

GEO. G. LATTA *et al.* }
vs. } = 315.
WM. H. GAINES *et al.* }

Whereas there is pending in the Supreme Court of the United States the cases of Sumpter *et al. vs.* Gaines *et al.*, = 313, and the two cases of Geo. G. Latta *vs.* Gaines *et al*, = 314 and = 315; and

Whereas by an agreement made with Mr. Benjamin, attorney for W. H. Gaines *et al.* in the trial of the causes in the United States — court for the eastern district of Arkansas, by which the testimony in certain other causes pending in said court was to be used and taken as testimony in the three above-mentioned cases; and

Whereas, when said cause was decided in the United States — court for the eastern district of Arkansas as aforesaid, said testimony, in accordance with said agreement as aforesaid, was copied and a transcript made of the same and said transcripts of said cases were filed in the Supreme Court of the United States; and

Whereas the testimony in cases = 313, = 314, and = 315 is identical and the same testimony; and

Whereas this testimony was taken from the testimony in the other cases in said court, in which were involved similar issues; and

319 Whereas said testimony has been printed in the other causes pending in the Supreme Court of the United States; and

Whereas it would be an expenditure without any benefit to either party herein to cause said testimony to be reprinted, and the same having already been printed:

Now, this agreement, made and entered into between Jno. J.

Sumpter — Geo. G. Latta, by Jno. McClure and U. M. & G. B. Rose, attorneys for all the parties herein, witnesseth:

That the said parties agree that the printed testimony in the cases now pending in the Supreme Court, which were appealed from the circuit court of the United States for the eastern district of Arkansas, and in which case- the said Wm. H. Gaines *et al.* are appellees, shall be taken as the testimony in this case, and the same shall be used as the testimony in the three above-mentioned cases, and that the record of those cases shall be a record in these cases, "excepting the complaint, answer, and other pleadings filed in said causes and the testimony taken before the Hot Springs commissioners and the records of the United States circuit court in these cases, together with the report of the special master and the decree thereon."

And it is agreed that the testimony in #313, #314, and #315 shall not be printed, except as above agreed.

This agreement is made without an opportunity to examine the transcripts in this case, and it is agreed that if, after the transcript is printed in accordance with this agreement, it shall be required by the appellees that any additional matter in the transcript on
320 file shall be printed, then said appellants shall cause it to be printed accordingly.

Given under our hand- this 4th day of February, 1892.

JOHN McCLURE,
For Appellants.
U. M. ROSE,
For Appellees.

321 [Endorsed:] 13468. Supreme Court of the U. S. October term, 1891. Term No., 315. George G. Latta, app't, *vs.* Wm. H. Gaines *et al.* Stipulation as to record and to omit parts of same in printing.

[Stamped:] Office Supreme Court U. S. Filed Feb. 15, 1892. James H. McKenney, clerk.

Endorsed on cover: Case No. 13,468. E. Arkansas C. C. U. S. No. 315. George G. Latta, appellant, *vs.* William H. Gaines and Maria Gaines. Filed January 2, 1889.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

GEORGE G. LATTA, Appellant,
v.
WILLIAM H. GAINES & MARIA GAINES, Appellees. } No. 315.

It is agreed of counsel in this case, in order to lessen the printed record and shorten the case made, that the plaintiff read in evidence in the court below the transcript of the proceedings before the Hot Springs Commission, showing his petition, his entry of the land, and his improvements on the same, as shown in the case of George H. Smith, appellant, *v.* William H. and Maria Gaines, now on the docket of this court and numbered 302; that said Gaines and wife filed their petition before said commissioners within the time required by law, asking to be allowed to purchase the lot named in their bill herein; that said appellant, J. W. Kimbell, also filed his petition before said commissioners in due time, asking that he be allowed to purchase said lots, and that said petitions were consolidated and heard by said board as one case.

That said Gaines, as appears by said transcript, read in evidence before said commissioners a written lease of said lot, which is as follows:

This indenture, made this 11th day of October, 1873, between W. H. Gaines, of Garland county, Arkansas, party of the first part, and J. W. Kimball, of said county, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the covenants hereinafter agreed to be performed by the said party of the second part, has leased and let and does by these presents lease and let unto the said party of the second part a certain lot or parcel of land situate in the village of Hot Springs, in the county of Garland, in the State of Arkansas, and described as follows: Beginning 12 feet north of the northwest corner of the boarding-house known as the "South Carolina house," on the east side of the principal street of said town of Hot Springs, runs thence N. 20 feet, thence E. 80 feet, thence S. 20 feet, thence W. 80 feet to the place of beginning; to have and to hold the same unto said Caver from the first day of January, 1874, until the title to the Hot Springs quarter section is settled; provided that the said Caver may surrender the above-described premises and determine this lease at his own election if he shall have complied with all and singular the covenants and agreements hereinafter contained. The said party of the second part covenants and agrees to pay unto the said party of the first part, his agent, heirs, or assigns, as a rental of the above premises the sum of $200 per annum, to be paid in instalments of $50 each, to be paid quarterly in advance. It is agreed that all improvements now on the premises belonging unto said

Caver and all improvements he may hereafter erect on said lot may be removed from said lot by the said Caver at any time during this lease or within 30 days after the expiration of the same, provided that all such improvements shall remain pledged and bound to secure the rent hereinabove provided for.

In witness whereof the parties have hereto set their hands and seals this the day and year first above written.

(Signed) WM. H. GAINES.
J. L. B. CAVER.

The following testimony was also taken before said commissioners:

J. W. Kimball testified: I built a house on the lots named in the petitions. I paid the rent under the lease to Gaines until April 31st, 1876. After that I paid rent to the receiver. The improvements I put on the lots cost me about $1,525.00. They are now worth about $1,000.00.

Gaines did not demand any rent of me after April 24th, 1876.

J. L. B. Caver testified: Mr. Conley had a blacksmith shop on the lots in 1870. It was moved away before the present buildings were commenced.

On the 9th day of October, 1879, said commissioners awarded the right to purchase said lots to said Joseph W. Kimball, and a patent was issued to him by the United States before the beginning of this suit. This, with the testimony shown in the printed transcript, was all the testimony introduced in the cause on the hearing thereof.

Given under our hands this 8th day of April, 1892.

JOHN McCLURE &
GEO. G. LATTA,
Att'ys for Appellants.
U. M. ROSE,
G. B. ROSE, *For Appellees.*

[Endorsed:] Case No. 13,468. Supreme Court U. S., October term, 1891. Term No., 315. George G. Latta, appellant, *vs.* William H. Gaines *et al.* Stipulation and addition to record.

[Stamped:] Office Supreme Court U. S. Filed Apr. 11, 1892. James H. McKenney, clerk.

Office Supreme Court U. S.
FILED.
APR 11 1892
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

B. W. GOODE, *Appellant*,

v.

WILLIAM H. GAINES AND MARIA GAINES, *Appellees*.

BRIEF FOR APPELLANT.

THOS. B. MARTIN,
GEO. W. MURPHY,
Attys. for Appellant.

ARK. DEMOCRAT CO., LITTLE ROCK.

In the Supreme Court of the United States.

B. W. GOODE, *Appellant*,

v.

WILLIAM H. GAINES AND MARIA GAINES, *Appellees*.

STATEMENT OF CASE.

The appellees instituted this suit in the Circuit Court of the United States for the Eastern District of Arkansas, to compel the appellant to convey to them a parcel of land—lot 6 in block 87, of the Hot Springs Reservation, and to account for its rents and profits. The bill charges that Albert Belding, Henry Belding, George Belding, and the appellee, Maria Gaines, heirs of Ludovicus Belding, entered the south-west quarter of section 33, township 2 south, range 19 west, in 1851, "under the pre-emption laws of the United States," and obtained possession of it in 1856. (*Record, p. 1.*) That on the 3rd of February, 1871, the appellee, William H. Gaines, by their authority, let a parcel of land which has since been laid off by the Hot Springs Commissioners as lot 6, block 87, to L. S. Allard for the term of a year, by a lease covenanting for renewals from year to year, "until the title to the Hot Springs quarter section of land was settled," and stipulating that Allard should have the right—not to be exercised, however, while any part of the rent remained due

and unpaid—to remove at any time before or within thirty days after its expiration, all buildings erected by him on the lot, and that said Gaines should have a lien on them to secure the rent; that Allard entered and held under the lease until the 1st of June, 1876, when the United States, through a receiver appointed for that purpose by the Court of Claims, took possession of the lot; that Allard owed rent to the amount of $25.00 on the 24th of April, 1876, and failed to remove the buildings before the expiration of the lease, or within thirty days thereafter, which thereby became the improvements of Gaines. (*Rec. p. 2.*) That in 1877 the appellant, without the consent of Gaines, and with notice of the terms of the lease, purchased Allard's claim to the lot; that within six months after the first sitting of the Hot Springs Commission under the Act of Congress entitled "An Act in relation to the Hot Springs Reservation in the State of Arkansas," approved March 3, 1877, the appellees, who had purchased the interest of the other Belding heirs in the preemption claim, filed before said Commission their petition to purchase said lot, and that the appellant filed a like claim; that upon the hearing, it was clearly shown by the petitions and evidence that appellant acquired his possession solely through said purchase and lease, but that the Commissioners misconstrued the law applicable to that state of facts, and awarded him the right to purchase said lot, and that he afterwards purchased it. (*Rec., pp. 2-3.*)

The answer, after denying all the material charges contained in the bill, except the fact of the filing of conflicting claims by the parties before the Hot Springs Commissioners,

and of the award to, and purchase by, the appellant, alleges that in 1871, the appellee, Wm. H. Gaines, let a parcel of land embracing a part of the lot to L. A. Phelps and John Niece for the term of five years or until the title to the Hot Springs Reservation should be settled, at the annual rent of $300, payable quarterly, by a lease, wherein it was stipulated that all buildings and improvements upon the land should be their property, and that they should have sixty days from the expiration of the lease within which to remove them; that Phelps and Niece being unable to improve the land or pay the rent, Gaines induced L. S. Allard, on the 27th of February, 1871, to purchase and take an assignment of the lease from them by promising to make no further claim to the land in case it should be decided to be the property of the United States, and assuring him that all the advantages that might arise from occupancy should in that event inure to him; (*Rec., pp. 5-6.*) that the term was renewed and extended and while Allard was occupying the land under the same stipulation, and after he had erected on it improvements worth $1,500, it was, on the 24th of April, 1876, decided to be the property of the United States; that it then being seen that the improvements, which, as between Gaines and Alard, belonged to Allard, could not lawfully be removed without authority from the United States, Gaines proposed, as an adjustment of their respective rights under the lease, that Allard should pay him rent to the 24th of April, 1876, and that he should renounce his claim as landlord in favor of Allard and assist him to acquire the land from the United States; and that Allard accepted the prop-

osition and complied with its terms; (*Rec., pp. 5-6.*) that the United States took possession of the land and improvements and rented them to Allard at $360 per annum; that the appellant, under the influence of statements made to him and others by Gaines, to the effect that he had no claim to the lot and would present none, but would assist Allard to procure the title to it, bought it from Allard for the price of $2,500; that the appellees owned no improvements on the lot, and were never in possession of it; and that the award to the appellant of the right to purchase it from the United States was just. (*Rec., pp. 6-7.*)

The evidence consists of,

1st. A certified copy of the claim of the appellees before the Hot Springs Commission and of the evidence introduced in support of it. (*Tr., pp. 12-95.*)

2nd. A certified copy of appellants claim before said commission, of the evidence in support of it, and of the decision in his favor. (*Tr., pp. 102-115.*)

3rd. The depositions of B. W. Goode, L. S. Allard and G. W. Baxter taken pending this suit, and appearing on pages 95-100.

It proves,

1st. That on the 3rd of February, 1871, Wm. H. Gaines let the land in controversy to L. A. Phelps and John Niece for "five years or until the title to the Hot Springs Reservation" should be settled, for $300 a year, by a lease in which it was stipulated that the building, a small and almost valueless one, then on a part of the land, and "all other buildings, additions and improvements" they might see

fit to construct, should belong to them, and that they should have sixty days, after the expiration of the lease, within which to remove them. (*Rec., pp. 108-114.*)

2nd. That on the 27th of February, 1871, Phelps and Niece, for $100, and with the consent of Gaines, sold their claim and assigned the lease to L. S. Allard, who thereupon built on the land a house worth $1,500. (*Rec., p. 115.*)

3rd. That Allard was induced to make the purchase and accept the assignment, by a statement of Gaines to the effect that if the land should be decided to be the property of the United States, he would make no further claim to it, and no claim through the lease. (*Rec., pp. 114, 116, 117.*)

4th. That just before or just after the expiration of five years from the date of the lease, Gaines proposed a continuation of the tenancy on the same terms until the termination of the cause then pending, saying that if it was decided adversely to him, he would make no further claim, and that Allard accepted the proposition. (*Rec., p. 97.*)

5th. That Allard paid Gaines ground rent to the date of the decision, April 24, 1876, and that Gaines told him that he had no further claim whatever, and at different times, then and afterwards, promised to assist Allard to procure the title from the United States. (*Tr., pp. 98-99.*)

6th. That Gaines, on several occasions, assured appellant that he intended to assist Allard and all his tenants who had paid him and acted fairly with him in the prosecution of their claims, and that appellant, led thereby to believe that Allard's claim to the land would be uncontroverted, bought it from him at the price of $2,500. (*Rec., pp. 93, 96, 118.*)

7th. That the Hot Springs Commission found the appellant to be the owner of the improvements on the lot, and entitled to purchase it from the United States. (*Rec., p. 19.*)

ASSIGNMENT OF ERRORS.

1st. The court erred in finding that the award of the right to purchase lot 6 in block 87 of the Hot Springs Reservation to the appellant, was made by the Hot Springs Commission through error and mistake of law, and that the patent was improperly issued to him, because it clearly appears from the pleadings and evidence, that he was, as between himself and the appellees, the owner of all the improvements made on the lot.

2nd. The court erred in finding that the appellant held the patent in trust for the appellees, and decreeing that the title to the lot be divested out of him and vested in them, and that he should make, seal and deliver a deed conveying it to them; because it appears from the pleadings and evidence that none of the improvements, in virtue of which the right to purchase it was awarded, belonged to them, and further appears from the evidence that if the appellee, Wm. H., ever owned or occupied any improvement on the lot, or had any possession of it, or ever had any right by virtue of the lease, he waived, abandoned, sold and transferred the same to Allard, appellant's vendor.

3rd. The court erred in holding that the appellees were entitled to rent from January 1, 1881, and decreeing that they recover from him the lot, the sum of $589, and costs of the suit.

ARGUMENT.

This case differs in some essential features from all the others in which the able and exhaustive brief of Judge McClure is filed.

The claim of the appellees before the Hot Springs Commission was based mainly on the entry of the Belding heirs, and included a large area of the quarter section embraced thereby. (*Rec.*, *pp.* 16-19). They seem to have hoped that it might be regarded as creating, so to speak, a colorable title extending their occupancy, by construction, to parts of the quarter section not within their pedal possession, on which there were improvements owned and occupied by others, and as giving them the right to purchase those parts, to the exclusion of such owners. They might, on the same principle, with less inconsistency, have claimed the whole quarter section. Is a colorable title less comprehensive than a good one, couched in the same terms? Why then did they stop at the limit of the improvements? Why not claim the unimproved parts as well? Was it from excessive modesty, or because they knew that the absurdity of a claim of the whole, on such ground, would be "too palpable?" Neither they nor the Belding heirs ever had any color of title; the land was not subject to sale; the entry was prohibited by law, was void—without even a trace of color of title.

Nor was the entry made under any ignorance of its total lack of legal sanction. The certificate of entry itself refers to the law by which it was reserved from sale (*Rec.*, *pp.* 17, 27); but it was used very profitably, not to say unscrupu-

lously, by the appellee, Wm. H. Gaines. Under the immense advantage of its influence, he dispossessed many poor people who had established little homes there, induced some to attorn to him, and bought the improvements of others at inadequate prices (*Rec.*, *pp. 18-20, 32-33*); such as refused to sell or surrender, he sued, (*Rec.*, *p. 19*). It took the financial ability and combative energy of Rector & Hale aided by the justice of a court of conscience, to stop him. (*Rec.*, *p. 18*).

When, through the coercive aid of the certificate, he had purchased valuable improvements, his sense of duty to the Beldings did not restrain him from claiming and retaining them for himself, (*Rec.*, *p. 37*); and it is a singular fact that their names appear in none of the leases, and that they were not claimants before the Board of Commissioners. In his testimony before the commission, he says that they had been hunted up to trouble him; that he had recently obtained á transfer from them, and that it was all his, (*Rec.*, *p. 38*); and in the claim, it is stated that all their rights have been so transferred. (*Rec.*, *p. 24*). Well may it be said, as in the bill, that they were under his supervision and control.

These operations of Gaines under the certificate of entry and with the Belding heirs, tend to prove that neither the appellant nor Allard was ever, in their occupation of the lot in controversy, in any relationship to either them or their entry, or any claim under it. All the improvements that he made or bought, he swears he claimed as his "individual" property (*Rec.*, *p. 37*); and every lease that he made of them was made in his "individual" name, without any allu-

sion to the Beldings. The lease in this case contains no allusion to said heirs, no indication of any agency; and he had on the lot a little old cabin which he sold to Phelps & Niece, in the transaction of the lease. (*Rec., pp. 108, 114, 115*). There is not a scintilla of evidence that he acted for them in making this lease. The Bill charges that he, "being duly authorized by said heirs" leased the lot to L. S. Allard; but this is denied by the answer. (*Rec., pp. 2, 5*).

If therefore, it were conceded that the certificate conferred on the Beldings, the color of a title into which it could never ripen, so as to give them the constructive possession of lots occupied by improvements they did not own, and this lot was shown to be within the entry, this would not assist the appellees. Having leased the lot as his own, at a time when he had no interest in the entry, Gaines cannot now rely on it in aid of the technicality, the harsh doctrine of estoppel by which he seeks to charge the appellant as a trustee. As he treated and dealt with it separately and as his "individual property in that transaction, so he must treat it in all controversies growing out of that transaction. He and his co-appellee cannot succeed in this case, unless by reason of the ownership of some improvement on that particular lot; and the evidence shows conclusively that they had none. Their claim of such ownership is based solely on allegations on the bill to the effect that under the lease, the lessor had a lien on the improvements for the payment of the rent; that none of them were to be removed while any part of it remained due and unpaid, nor after thirty days from the expiration of the lease; that the lessee owed $25.00

in rent on the 24th of April, 1876, and failed to remove the improvements within thirty days after the expiration of the lease (*Rec., p. 2*); but the bill also charges that Allard occupied the lot under the lease until the 1st of June, 1876, when the United States dispossessed all parties to this suit, so that a failure to remove within thirty days from that time could give them no title. Turning, however, to the evidence, we find that these allegations are untrue. The lease, on which they are forced to rely, a copy of which is on page 108 of the record, contains no such provisions. It provides that all the improvements shall belong to the lessees, and allows sixty days after its expiration for their removal. Such removal after the United States took possession would have been a conscious violation of law, and consequently, the appellant could be in no default in this regard.

In *Cannon v. Pratt, 99 U. S., 619*, it was held, in effect, that a statement made by Young, who had improvements on public land in the city of Salt Lake to Mrs. Pratt, to the effect that she might take possession of them, or the land they were on, and have it, followed with occupancy by her, transferred to her all his interest in the land, and the right, as against him, to a conveyance of the title on its being entered under the town site act. We shall not go much farther until we find ourselves clearly within the principle of that decision.

At the time of the transfer of the lease to Allard, April 19, 1871, suits involving the validity of the entry of the Belding heirs, and other claims to the same land, were pending in the court of claims, and it was believed by Allard and

many others, including Gaines himself, that none of them would be held valid; but the uniform magnanimity of the government towards its citizens who had built towns upon the public domain, was well known; and there was an abiding confidence that if all the claims were found to be invalid some law would be enacted whereby the citizens of the town of Hot Springs would be permitted to purchase on favorable terms, the lands they had improved, and as natural justice would seem to dictate, in such event, that those who, by investments of money or labor, had acquired improvements would be the recipients of whatever bounty might be conferred in respect to the land occupied by them, we may conclude that Gaines did not expect a title to the whole quarter section to fall into his lap. In a business-like way, he determined to make what he could out of it before the decision came—to get "all that was in sight." The fact that he prosecuted the suit on the pre-emption claim does not argue that he had faith in it; he could well afford to prosecute it. It was profitable to postpone, even by litigation, the time when the government would take possession. While it was pending he received $1,800 in rent from Allard alone. (*Rec., p. 117.*)

What he wanted was rent; and, as Phelps and Niece were poor, he was probably anxious to have Allard substituted for them; at any rate, when Allard, who would not otherwise have purchased from them (*Rec., p. 117*), asked him what construction he put upon the clause in relation to the possession, whether, in the event "the United States recovered the property against him, he would consider that he had any claim through the lease," he answered, "cer-

tainly not" (*Rec., p. 114*); and about the time the five years of the term expired, he made with Allard an agreement that Allard "should continue on until the court in which the case was then pending, should decide it," and that if it was decided against him, he would have no further claim. (*Rec., 97-98.*) Allard performed his part of this agreement and paid the rent up to the 24th of April, 1876, the date of the final decision. (*Rec., p. 98.*) The last payment, $25.00, was made after the decision by a note, and when Allard handed it to Gaines, Gaines said, "Now, Allard, I have no further claim whatever upon the lot; it is yours as far as I am concerned; it is you and the United States government for it." (*Rec., pp. 98, 117.*) Gaines' agent, Baxter, testifies to the same effect. (*Rec., p. 99.*) To all this may be added his assurances to Goode that he intended to assist Allard and all his tenants who had paid him and acted fairly, in getting their claims. (*Rec., pp. 116, 96.*)

These statements of Gaines are abundantly proved; that he made them is not denied. He knew that his statement made pending the negotiations between Allard and Phelps and Niece, would influence Allard's conduct. The agreement made at the expiration of the five years, amounted on his part to a transfer or renunciation of whatever rights he had in favor of Allard, on condition that the pending litigation resulted unfavorably to him, and was made on consideration; nor is this all: Gaines confirmed it upon receipt of the last payment after the decision.

Now, upon these undisputed facts, has not the appel-

lant a much clearer case against Gaines than Mrs. Pratt had against Young?

This case is like the case of *Rector v. Gibbon* in no essential feature. It is true that there is a lease in this case as there was in that; but the leases are dissimilar. In the lease in this case there is a transfer to the lessees of the meagre improvement Gaines had on the lot, and a stipulation that all the improvements thereafter made by them shall belong to them; but in the lease in that case there was no such transfer and no such stipulation. In that case the court say:

The lessees in this case and those deriving their interest under them, could, therefore, claim nothing against the plaintiff by virtue either of their possession, for it was in law his possession, or of their improvements, for they were in law his improvements, and entitled him to all the benefits they conferred, whether by pre-emption or otherwise (*111 U. S., 284*); but in this case it would have been different—certainly, the language in reference to the improvements. In that case all the fraudulent evasions and breaches of contract emanated from the lessee; but in this case, all that there is of that nature comes from the lessor.

In that case Rector had done all that equity could require; in this case Gaines has done nothing that is equitable. Again, it is said in that case, "Everything in the statute, from beginning to end, indicates an intent that, in awarding the right of pre-emption, the Commissioners should be governed, not by an arbitrary discretion, but by the existence of claims by possession, and a consideration of the mutual rights of parties as between one another. * * * *

On matters depending on conflicting evidence as to the extent of occupation and many other matters, the action of the Commissioners is undoubtedly final" (*Id., 289*); and that, "There has been in this respect, in the whole legislation of the country, a consistent observance of the rules of natural right and justice. (*284.*)

Under the rules here furnished, the Commissioners would not have been justified in awarding the right of preemption to the appellees. If they had so awarded they would necessarily have adjudicated to them the ownership of the improvements, as clearly appears from the 13th section of the act under which they were sitting. In this section it is provided that any claimant who does not wish to purchase the land adjudicated to him, shall have the right to remove the improvements. (*Supp. to Rev. Stat., Vol. 1, p. 292.*)

Such an adjudication would have been a consummation of the gross violation of Gaines' contract, set in motion by the appellees in soliciting it—a consummation utterly irreconcilable with the principles of natural right and justice, or with any possible result of any reasonable consideration of the evidence touching the mutual rights of the parties as between themselves.

Respectfully submitted,

THOS. B. MARTIN,

GEO. W. MURPHY,

Attys. for Appellant.

MAR 14 1892
JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No. 302. George H. Smith v. Wm. H. and Maria Gaines.
303. Patrick Dugan v. Wm. H. and Maria Gaines.
304. Charlotte Cohn v. Wm. H. and Maria Gaines.
305. Richard E. Allen v. Wm. H. and Maria Gaines.
306. James Madison v. Wm. H. and Maria Gaines.
307. D. C. Rugg v. Wm. H. and Maria Gaines.
308. A. S. Garnett v. Wm. H. and Maria Gaines.
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312. Otto Neubert v. Wm. H. and Maria Gaines.
313. John J. Sumpter v. Wm. H. and Maria Gaines.
314. George G. Latta v. Wm. H. and Maria Gaines.
315. George G. Latta v. Wm. H. and Maria Gaines.

BRIEF FOR APPELLANTS.

JOHN McCLURE,
For Appellants.

PRESS PRINTING CO., LITTLE ROCK, ARK.

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315. George G. Latta v. Wm. H. and Maria Gaines.

BRIEF FOR APPELLANTS.

The matters in controversy in these cases grow out of, and are founded on the act of March 3, 1877, which provides for the survey and sale of what is known as the Hot Springs reservation, in the State of Arkansas, and the act of June 16, 1880, entitled, "An act for the establishment of titles in Hot Springs, and for other purposes." (U. S. Stat., Vol. 21, p. 288.) The errors complained of are as follows:

1. That the court erred in not dismissing the bill, because it is not apparent or manifest therefrom, or the testimony adduced at final hearing, that the commissioners erred in a misconstruction of the law, upon the facts stated in said bill, *upon which the misconstruction of law is alleged;* the only fact stated upon which the misconstruction of law is alleged being that the appellants obtained

possession of the *lots*, in the first instance, under a lease from the appellees, *without allegation or proof that the appellees made any improvements on the lots prior to said lease, or that they became the owners of any improvements on said lots prior to April 24, 1876.*

2. That the court erred in not dismissing the bill, it appearing therefrom, and the testimony adduced at final hearing, that the matters alleged in the bill were presented to a special tribunal, clothed with full power under the act creating it, to finally adjudicate between the appellees and the appellants, in relation to the lots in controversy; that it did adjudicate in favor of the appellants, and that said adjudications were afterwards confirmed by Congress, and that the matters complained of in the bill are *res adjudicata*.

3. That the decree is erroneous in this: That it appears from the face of the bill, and the proof submitted at final hearing, that the improvements on the lots in controversy, were placed there by the appellants prior to the 24th of April, 1876, and it being adjudged by the court that the appellees were not the owners of said improvements, by contract, purchase or forfeiture, and that the appellants were the owners of the improvements on said lots, the decree ought to have been for the appellants instead of the appellees.

4. That the decree is erroneous in this, that it appears from the proof, at final hearing, that the appellees became the owner of *three-fourths* of the claim which they preferred before the Hot Springs commissioners, *after the 24th of April, 1876*, and if said decree is correct in *principle*, it is erroneous as to *quantity*, in so far as it gives the appellees title to more than one-fourth interest in the lots in controversy.

5. That the decree is erroneous in overruling the exceptions to the special master's report on the matter of the rental value of the lots.

THE PROPOSITIONS WHICH WILL BE CONTENDED FOR.

In addition to the errors stated, I shall undertake to maintain the following propositions:

1. That the Rector-Gibbon case furnishes no rule of decision for the cases at bar, because, by the terms of the lease in that case, the improvement or building on the lot was to become the property of the lessor, while in the cases now before the court, the buildings and improvements were to, and did at all times, remain the property of the *lessees* with the right of removal.

2. That it is apparent, from the language of the act of 1877, that Congress intended the adjudications of the commissioners should be final, and that this intent is made manifest from following the form of statutes that this court, for more than a quarter of a century, had declared, created a board belonging to the *political* department of the government, and whose adjudications *could not be reviewed by the courts*, and from the records of the proceedings of

Congress, wherein it is shown that during the pendency of the act of 1877 an amendment was offered to the bill, *giving the courts jurisdiction over the awards of the commissioners*, where claimants were dissatisfied with the awards, *and that the amendment was defeated*, and by showing that *after* the awards were made, and laid before Congress, it was again asked to grant the courts jurisdiction to review the awards, *and that it again refused to confer such jurisdiction on any court*, and after inquiry into charges of unfairness and fraud in making the awards, *that Congress confirmed the awards made by the commissioners, by affirmative legislation*.

3. That under the act of 1877, where it makes mention of the words "claimants" and "occupants," was not intended by Congress to be limited or confined to only such claimants and occupants "as had made improvements or claimed possession under an assertion of title, or a right of pre-emption, by reason of their location or settlement," but was intended to grant a preference right to persons who had made improvements on the reservation prior to April 24, 1876, to purchase the ground on which their improvements were erected, without regard to previous claim of title, possession, or, in the language of the fifteenth amendment, previous condition of servitude.

4. That the act of June 16, 1880, granted the appellants the sole right to purchase the lots in controversy, independent of any award made by the Commissioners, and that this court, if it has the power to review the award of the commissioners for errors of law, cannot supervise or set aside the award made by Congress to the appellants.

HISTORY OF THE LEGISLATION AND LITIGATION.

On the 20th of April, 1832 (4 Stat. at Large, 505), Congress passed an act, the third section of which is as follows:

"That the hot springs in said territory (of Arkansas), together with four sections of land, including said springs, as near the center thereof as may be, shall be reserved for the future disposal of the United States, and shall not be entered, located or appropriated, for any other purpose whatever."

Anterior to the passage of this act, and before the extinguishment of the Indian title, attempts were made to prefer a claim to the quarter section of land on which the hot springs are situate. Divers persons visited these springs, squatted upon, and built a few log cabins on the south-west quarter of section 33, township 2 south, range 19 west, not with a view of making a permanent settlement thereon, or acquiring title thereto, but to protect themselves from inclement weather during the period they were taking baths.

One John Perciful, who did not reside at, but was in the habit of visiting the springs for the purposes of trade, built a cabin or two, and from time to time took possession of other cabins which had been built by mere visitors, as an abiding place during their sojourn.

after they had abandoned them. John C. Hale purchased the cabins thus erected, from Perciful, and preferred a claim to said quarter section, on which the seventy odd springs are situate, under the pre-emption act of April 14, 1814, and this constitutes the sole merit of what is known as the Hale claim.

The next claim was that of Belding, who preferred a claim to the same quarter section, under the pre-emption act of May 29, 1830 (4 Stat., 420). This court in disposing of that claim said: "If it were necessary to examine his (Belding's) mode of occupation, it would be open to some very just criticism." This claim was assigned to Gaines, and constitutes what is known as the Gaines claim, who is the appellee in this suit.

Gaines v. United States, 92 U. S., 698.

The third claim was that of Henry M. Rector, and is founded on a pretended location of a New Madrid float, which was attempted to be located on said quarter section, at a time when the Indian title had not been extinguished, and before the lands south of the Arkansas River had been surveyed. The New Madrid claim was as much a gratuity, in the hands of the person to whom it was issued, as are the rations that Congress sends into the Mississippi valley in time of overflow, or to Kansas and the west after the festive grasshopper has made a visit to that locality.

The two persons who preferred the pre-emption claims, that is, Hale and Gaines, are no more entitled to be called pre-emptors, than the man in Texas was entitled to be called colonel, because he married a colonel's widow.

These three parties, for thirty or more years, were in continuous litigation, between themselves, over their pretended claims. The nature and character of that litigation, and the flimsy pretence on which it was founded, need not be further referred to, as this court has declared that neither of the claimants had either a legal or equitable right to the land over which they had been litigating.

THE SUIT IN THE COURT OF CLAIMS.

The litigation which these claimants had waged, during all the years mentioned, could never determine the question of *title* as the actions pending between them related only *to the right of possession.* The public and the afflicted finally appealed to Congress to provide a forum where the question of *title* could be litigated and settled for all time. On the 11th of June, 1870, Congress passed an act declaring that:

"Any person claiming title, either *legal* or *equitable*, to the whole or any portion of the four sections of land constituting what is known as the Hot Springs reservation, in the State of Arkansas, may institute, against the United States, in the Court of Claims, and

prosecute to final decision, any suit that may be necessary to settle the same." (U. S. Stat., Vol. 16, p. 149.)

Under the provisions of this act Hale, as the representative of the Perciful claim; Gaines, as the representative of the Belding claim, and Rector, as the representarive of the New Madrid claim, instituted suit against the United States. No claim was made by anyone to any other portion of the reservation. These suits were consolidated, and the Court of Claims, on the 25th of April, 1875, decided that none of the claimants had either a *legal* or *equitable* claim to the quarter section in dispute, and that the title to the property was in the United States. From that decision an appeal was prosecuted to this court, and this court affirmed the decision of the Court of Claims.

Gaines v. United States, 92 U. S., 698.

At the time of the rendition of the decisian by this court (April 24, 1876,) there were, perhaps, five or six hundred houses on the *entire* reservation. Seventy-five or a hundred of these had been erected by persons, other than the old claimants, on the southwest quarter of section 33, under leases from one or the other of these so-called claimants, and some had been built under the persuasive muzzle of a shotgun in defiance of the preteusions of all of them. The other four or five hundred houses were built *upon other portions of the reservation to which no claim had ever been made by anyone as against the government.*

Under the fifth section of the act of June 11, 1870, conferring jurisdiction on the Court of Claims, it was provided that, if the courts should finally determine in favor of the United States, the lands comprising the reservation should be placed in the hands of a receiver, whose duty it is made to take charge of and rent out the same for the United States until Congress shall, by law, direct how the same shall be disposed of. The receiver was appointed, and in June, 1876, took possession of the property and, with the aid of a military company, compelled all persons to atorn to him, and in most cases required them to accept leases from him.

Congress, soon after the decision of April 24, 1876, was besieged by the people at Hot Springs, to relieve them from the exactions of the receiver, and to pass an act giving those who had made improvements on the reservation the right to purchase the ground on which they were erected. Congress passed such an act, and it is now known as the act of March 3, 1877. (*U. S., Stat., vol. 19, p. 377.*)

The first section of the act repeals the fifth section of the act of June 11, 1870, authorizing the appointment of a receiver.

The second authorizes the President to appoint three persous, "Who shall constitute a board of commissioners, who are hereby authorized to perform and discharge the duties specified in this act," and fixes the place of meeting at Hot Springs, Ark.

The third section describes the land composing the reservation, and directs that, "after examining the topography of the reservation," the commissioners shall "lay out, into convenient squares, blocks, lots, avenues, streets, and alleys," the said reservation, and that in doing so they shall observe the boundary lines of the occupants, as far as is consistent with the interests of the United States.

The fourth section authorizes the commissioners to reserve the grounds on which the springs are situate.

The fifth section of the act requires all claimants or occupants, on the reservation, who desire to have a preference right awarded them, to purchase the land they have improved, to present their claims within six months after the first meeting of the board, and inhibits the commissioners from considering any claim based upon improvements made after April 24, 1876. And in defining the duties and the scope of the inquiry which the commissioners are to make declares:

"That it shall be the duty of said commissioners, to show by metes and bounds, on the map herein provided for, the parcels or tracts of land claimed, *by reason of improvement made thereon*, or occupied by each and every such claimant and occupant on said reservation; to hear any and all proof, offered by such claimants and occupants and the United States, in respect to said lands, *and in respect to the improvement thereon*; and to finally determine the right of each claimant or occupant to purchase the same, or any part thereof, at the appraised value, which shall be fixed by said commissioners."

The sixth section declares: "That said commissioners shall have power to compel the attendance of witnesses and the production of papers *touching the occupancy or improvements of, or on said lands*, or any other matter in any wise belonging or appertaining either to the said lands, *or the improvements thereon;* shall have the power to examine, under oath, all witnesses that may come before them, and all testimony shall be reduced to writing, and preserved as hereinafter provided."

The seventh, eighth, ninth and tenth sections have no reference to the rights of persons presenting claims before the commissioners and need not be mentioned.

The eleventh section declares: "That any claimant or occupant, his heirs or legal representatives, in whose favor said commissioners have adjudicated, shall have the sole right to enter and pay for, at the price fixed by the commissioners, the amount of land the commissioners had adjudged that they were entitled to purchase, at any time within twelve months next after the land officers give the public notice herein required."

The twelfth section declares: "That upon failure of the claimant or occupant, in whose favor the commissioners have adjudged, to pay the valuation fixed upon said lands, within the time and manner

herein prescribed, then the said lands, together with all other lands that no one has an adjudicated right to purchase, shall be sold at public auction, etc."

The thirteenth section declares: "That any claimant or occupant who does not desire to purchase the lands adjudicated to him, at the valuation fixed by said commissioners, shall have the right to remove any improvement made on said land at his own cost at any time before the day fixed for the payment of said land."

The history thus far given is mentioned for the information of the members of the court who were not members of it when the Hot Springs cases were decided, and who were not members of it when the Rector-Gibbon case was decided, and for the purpose of refreshing the memory of those who participated in the decision of the cases mentioned.

The present litigation to some extent arises over the construction to be placed on the act of March 3, 1877, as both parties at one time claimed under that act, before the Hot Springs commission, the right to be adjudged the right to purchase the lots in controversy.

THE CONTENTION BEFORE THE HOT SPRINGS COMMISSION.

Gaines claimed before the commission, as is now claimed in his bill, that the improvements on the lots became his, not by reason of contract or purchase, but *by forfeiture under the lease.* (Pp. 112–13, Term No. 310.)

The appellants claimed the right to purchase the lots upon the ground *that they made and were the owners of the improvements on the particular lot on the 24th of April, 1876.* (Pp. 116–17, Term No. 310.)

The commission found that the improvements belonged to the appellants; that they were the owners thereof on the 24th of April, 1876, and awarded them the right to purchase.

The finding of the commission is as follows:

"At this time comes the petitioner, Richard E. Allen, and the commission having heard and considered the testimony, as also the testimony in claim No. 784, William H. Gaines and Maria Gaines, do say and find that the claim of the petitioner accrued prior to the 24th of April, 1876, by reason of *the use, occupation and improvement of the premises described in the petition, and that the petitioner is the owner and entitled to the possession of the improvements thereon.* And the commission, * * * being sufficiently advised of the premises, do further say and find that the petitioner is entitled to purchase from the United States, the following described land, to-wit * * * It is therefore ordered and adjudged that the said * * * is entitled to purchase said lot, etc."

All of the findings of the commission, in the cases at bar, are after the manner of the one set forth, the only change being as to the name of the petitioner and the lot.

It will be observed that the commissioners distinctly find that the petitioner, Allen, "*is the owner and entitled to the improvements thereon*," and that the claim accrued prior to April 24, 1876.

The appellant purchased the lot in controversy and a patent issued to him therefor. After the issue of the patent (June, 1881,) the appellees instituted suit, (May 23, 1884,) the object of which is to have the appellants decreed to be trustees and to compel a conveyance of the title acquired.

ALLEGATIONS IN THE BILL AND OTHER PLEADINGS.

The bills are substantially the same, only differing as to the name of the defendant and the number of the lot, and recite that in the year 1851, Maria Gaines, Albert Belding, Henry Belding and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, entered, under the pre-emption laws of the United States, the southwest quarter of section 33, township 2 south, range 19 west (which is a part of the Hot Springs reservation), paying therefor, $200. It is further recited that the Belding heirs obtained a judgment against one Jacob Sweepster (whose claim of title or possession does not appear), and were put in possession of said quarter section. The litigation in the Court of Claims is then recited, and the affirmation of its decree by this court.

It is also recited that the Belding heirs had paid taxes and built some houses upon said quarter section and fenced a portion thereof, *but there is no allegation that they made any improvements on the specific lots in controversy*. The proof is, that they did not.

After describing the lot claimed, the bill alleges the execution of a lease by the defendant to Gaines, bearing date usually in the year 1874, and said leases are all, with two or three exceptions, as follows:

"To have and to hold the said lot unto the lessees for a term of one year from the date hereof, to be renewed from year to year, at the election of the lessees, *until the title to the Hot Springs quarter section of land is settled*, for the annual rent of $300 and the lessee's covenant, and agree to pay to the lessor or his legal representatives the said rent of $300 per annum in installments of $75 each on the 5th days of each November, February, May and August during the continuance hereof; and it is agreed, *that any and all buildings which the lessees may erect on said lot during the continuance hereof may be removed therefrom, by the lessees at any time within thirty days after the expiration hereof;* provided, however, that the lessor shall have a lien on all such buildings to secure the payment of the rent hereinabove provided for; and no such building shall be removed from said lot by the lessees while any part of said rent shall remain due and unpaid; and it is further agreed that if the lessees shall make default and be in arrears with said rent or any part thereof for fifteen days at any time the lessor may enter upon the premises, eject the lessees therefrom, and repossess himself of the same

without notice or other legal process. This lease shall not be assigned nor the premises underlet without the written consent of the lessor being first endorsed hereon."

After reciting the terms of the lease the bill then alleges:

"Said lessees took possession of said land by virtue of said lease only * * * and occupied the same, *under said lease, until the first of June, 1876;* that on the 24th of April, 1876, said lessees owed the lessor for rent the sum of $68.85; that said lessees failed to remove said buildings erected by them at any time during or within thirty days *after the expiration of the lease*, and by virtue of the provisions of said lease said buildings and improvements erected by said lessees, *became the buildings and improvements of Wm. H. Gaines.*

The bill further alleges that Gaines, "by arrangement with George, Henry and Albert Belding *became the owner of said claim;* (that is to say the pre-emption claim of Ludovicus Belding, deceased), that both Gaines and Allen made claim to the lot before the Hot Springs commission and that the commission misconstrued the law applicable to the facts and awarded the right to purchase the lot to Allen; that Allen did purchase and has received a patent therefor; that by a misconstruction of the law Allen was wrongfully and illegally awarded the right to purchase, etc."

The prayer is, that the defendants be decreed to hold said lots as trustees for the plaintiffs and to convey the same to the plaintiffs, etc.

The answer need not be stated at length. It will be sufficient to say that it denies every allegation in the bill except the execution of the lease; the litigation referred to, and the filing of claims before the Hot Springs commission.

In most of the cases there is a demurrer clause to the bill upon the following grounds:

"1. There is no equity upon the face of the plaintiffs complaint.

"2. Said complaint discloses a final adjudication of the matters in controversy by a tribunal clothed with full power to finally adjudicate the same."

THE INTERLOCUTORY DECREE.

The interlocutory decree in the court below is as follows: "Now on this day this cause came on for final hearing, * * * and now being sufficiently advised in the matter as to the proper decree to render herein, the court finds that the board of commissioners mentioned in said complaint, by error and mistake of law, awarded the right to purchase lot — to R. E. Allen, etc."

"It is therefore considered, ordered and decreed that all right, title and interest, and estate of the defendant, R. E. Allen, in and to said tract of land be, and the same is hereby, divested out of said defendant, R. E. Allen, and vested in plaintiffs, and their heirs and assigns forever, etc." * * *

"And it is further ordered that this cause be referred to N. W. Cox, special master of this court, who is directed to ascertain and report to this court at its next term: * * *

"Third. The value *of the improvements made upon said lot by the defendant* before the award and since the award of said commission, to be reported separately." (Term No. 305, p. 10.)

The master reported, in response to the third direction, as follows:

"The value of the improvements before the award	$ 2000
"Since the award	3500
"Total	$ 5500
"Present value of improvements	$ 4000

APPELLEES DECREED TO PAY FOR IMPROVEMENTS.

Exceptions were filed to the master's report and the conrt, on the hearing of the same decreed as follows:

"It is ordered, adjudged and decreed that all of the exceptions of the defendant to the master's report be, and the same are overruled; * * * and thereupon the court finds and states the amount between the plaintiffs and defendant as follows: * * * * by amount due the defendant for taxes paid and interest, $710.52; by amount of purchase money paid and interest, $422.40; *by present value of improvements, $4000*, which said sums amount in the aggregate, to $5132.92, from which take $3302, as above, leaves the sum of $1830.92, which the court finds the balance now due the defendant."

Then follows a decree in favor of the defendant for the amount thus found due, and a decree in favor of the plaintiffs for the lot. (Term No. 305, p. 123.)

As has been stated, precisely the same question, that is, whether the buildings on the lots in controversy became forfeited to Gaines under the terms of the lease, or otherwise, was presented to the commission and the court below. Both tribunals find that the buildings do not belong to Gaines. If the court below had not found that the buildings belonged to the appellants, it would not have decreed that Gaines should pay for them.

Gaines has not appealed from the decree adjudging him to pay for the improvements of the appellants, and his claim that the improvements on the lots in controversy belong to him is at an end. That question is *res adjudicata*, so far as this court is concerned, and the questiou presented by the record is:

1. Whether one who did not *make* or *own* an *improvement* on the lot claimed, *prior to April 24, 1876*, can be adjudged the right to purchase a lot under the act of 1877?

2. Whether the *owner* of an *improvement*, placed on a lot, *prior to April 24, 1876*, who, under his lease, had the right to remove the

same, and to which the lessor had no claim whatever, can be held to be a *trustee*, under the act of 1877, for the lessor, and be adjudged to have the lot, *the lessor having made no improvements thereon?*

THE BILL SHOULD BE DISMISSED FOR WANT OF EQUITY.

In *Quinby v. Conlan, 14 Otto, 420*, this court in stating what misconstructions of law would authorize a court to take cognizance of said:

"The misconstruction of the law, by the officers of the department, which will authorize the interference of the court, must be clearly *manifest*, and not alleged *upon a possible finding of facts from the evidence, different from that reached by them.*"

The alleged misconstruction of the law is not *manifest*, in the cases now under consideration. The allegation of the *fact* over which, and upon which the misconstruction of the law is alleged to have been made is as follows:

"That plaintiffs within six calendar months after the first sitting of the commission filed their claim before said commissioners to purchase said lot, and that defendants filed a like claim, and that upon the hearing of said claims they were consolidated by said commission for the purpose of hearing testimony; and said petitions filed, and the testimony taken before said commission clearly show, that the defendants had acquired their *possession* in no other way but by said lease, made by plaintiff to said defendants; and notwithstanding that said petition and testimony showed that defendants acquired *possession only by virtue of said lease*, still said commission misconstrued the law applicable *to that state of facts*, and awarded the right to purchase said lot to defendants, and since said award said defendants have purchased said lot from the United States and received a patent therefor, and on account of said misconstruction of the law, *as applied to the facts* before said commission, the right to purchase said lots, which in law and equity, and good conscience should have been awarded to the plaintiffs, was by said misconstruction of the law illegally and wrongfully awarded to the defendants by said Hot Springs commission."

The claim is, that the defendant got *possession* of the *lot*, under a lease from the plaintiff, and because of *possession* thus obtained, the commissioners misconstrued the law, in not adjudging the plaintiffs the right to purchase, instead of the defendant. The assumption is, that the defendant was awarded the right to purchase, on account of *possession*, and that if the defendant had not been adjudged the right to purchase the lot on account of *possession, ex necessitati*, the right would have been awarded the plaintiffs. Such a conclusion does not follow, for if no other person had applied for the lot, than the plaintiffs, the plaintiffs, on the statement of fact upon which, and out of which they say the misconstruction of law arose, *was not entitled*

to the lot. The fact that one had *possession* of the ground, out of which the lot was carved, prior to April 24, 1876, unless *improvements* had been made thereon, did not entitle the plaintiffs to be adjudged the right to purchase.

It may be true that the commissioners erred in awarding the right to purchase *to the defendants*, but such an error does not *enlarge* or *extend* the rights of the plaintiffs. The question is *not* whether the commissioners erred in awarding the *lot to the defendant*, but whether they erred in not awarding the right to purchase *to the plaintiffs?*

In *Mobile v. Eslave, 16 Peters, 246*, in construing the act of 1824 in relation to the water lots, in Mobile, the court said:

"No construction of this act can favor the hostile pretensions of *both parties;* and if the true construction of it shall give no title *to the plaintiffs, the controversy is at an end.*"

So in the cases at bar, it matters not *on what ground* the commissioners awarded the *defendants* the right to purchase the lot, if the plaintiffs *are not entitled to it.* Their theory, no doubt is, that if they had not let the defendants into possession the defendants could not have made an improvement on the lot, and if they had not made an improvement on the lot, the defendant would not have been awarded the right to purchase. All that may be true, but that does not tend to show that the commissioners erred in a misconstruction of the law, in not to awarding the lot the plaintiff, for it is equally true, if the plaintiff or no other person had *improved* the lot *it would have gone to the United States.*

When the appellees preferred their claim before the commissioners they averred they were the owners of the improvements on the lots, and that they became the owners thereof by forfeiture under the lease. Whether there had been a forfeiture under the lease depended on the determination of a fact which had to be found from the evidence. The commissioners found that issue against the appellees, and that the improvements on the lots belonged to the appellants and were placed thereon prior to April 24, 1876. That left the claim of the appellees standing before the commissioners, asking an award of the right to purchase the lots, not "by reason of improvements thereon," but upon the naked ground of previous *possession.* That is the precise contention now.

It is true that the appellees allege in the bill that they now claim the improvements by forfeiture, but it is not claimed that the commissioners erred in any matter of law, in finding the appellants were the owners of the improvements. The misconstruction of law complained of is not that the commissioners erred in not awarding the lots to the appellees when it appeared from the facts that *they* were *the owners of the improvements*, but that they erred in awarding the lots to the appellants when it appeared that the *possession* which the appellants obtained originally, not of the improvements, *but of the lots*, was obtained from the appellees under lease.

This case must be tried on the record, and so far as this proposition is concerned, as upon demurrer to the bill. The question to be answered is:

"Does mere former *possession* of the ground, out of which the lot is carved, entitle the plaintiffs to an award of the lots claimed, *without showing they made or owned an improvement thereon on or prior to the 24th of April, 1876?*"

If this question is answered in the negative, there was no misconstruction of the law by the commissioners, and this case is at an end. To answer it in the affirmative, is to say that mere former possession of the ground, out of which the lot was carved, is that which entitled one to the right to be adjudged the right to purchase.

Justice Miller, in *Marquez v. Frisbee, 101 U. S., 473*, in delivering the opinion of this court said, that unless the court could clearly see where the mistake of law was made, they would let the decision of the special tribunal stand. The learned justice conceded that counsel *in argument* made his case, but reminded counsel that the case would have to be tried *on the record* and *not the argument.*

The demurrer to the bill should have been sustained on the ground that the facts stated in the bill upon which the misconstruction of law is based showed no right in the plaintiffs to be adjudged the right to purchase the lot.

The following table shows the value of the improvements placed upon each lot by the appellants prior to April 24, 1876, and the value of the improvements on said lots, at the date of the rendition of the decree, for which a decree was rendered against the appellees.

Term No.	*Name of Appellant.*	*Value April 24, 1876.*	*Value at date of decree.*
302	George H. Smith	$1100	$2364 60
303	Patrick Dugan	300	600 00
304	Charlotte Cohn	3500	4500 00
305	Richard E. Allen	1800	4000 00
306	James Madison	900	500 00
307	D. C. Rugg	250	500 00
308	A. S. Garnett	800	700 00
309	A. S. Garnett	350	1450 00
310	D. C. Rugg	900	700 00
311	Vina Granger	400	1800 00
312	Otto Neubert	300	1875 00

THREE OF THE BELDING HEIRS FAILED TO FILE A CLAIM BEFORE THE COMMISSIONERS.

Neither George, Henry or Albert Belding presented a claim before the commission. If they did not present a claim, the concluding portion of the fifth section of the act of 1877, declares:

"Such claimants and occupants shall file their claims, under the provisions of this act, before said commissioners within six calendar months after the first meeting of the board of commissioners, or their claims shall be forever barred; and no claim shall be considered that accrued since the 24th of April, 1876."

Under this provision, whatever was granted to the three Belding heirs is forever barred, unless the alleged assignment of their interest to Gaines can be upheld.

GAINES CANNOT RECOVER MORE THAN A ONE-FOURTH INTEREST.

If, as is intimated in the Rector-Gibbon case, the act of March 3, 1877, was passed for the benefit of the persons who claimed "under an assertion of title, or a right of pre-emption," then it becomes necessary to inquire as to what claim or standing Gaines had or could have before the commission.

The testimony shows that the pre-emption claim was not that of Gaines, but *of the Belding heirs*, his wife being one of the four. He claims that he had an assignment of the rights of the other three, George, Henry and Albert Belding. If he did, his proof shows that he got an assignment of this three-fourths interest in the Belding claim in the latter part of the year 1877, *that is to say, after April 24, 1876.*

It does not appear from the bill *when* it was that the appellees obtained the interest of Albert, Henry and George Belding, but it does appear from the testimony when it was acquired, and it may as well be stated now as hereafter.

In the testimony of Gaines before the Hot Springs commission February 11, 1878, he was asked:

Q. (P. 56, Term No. 310.) In whose right do you make your claim to the property *now?*

A. In the right of Maria Gaines and myself.

Q. Did the Belding heirs file any petition?

A. No. sir; I am controlling it all by myself.

Q. (P. 58, Term No. 310.) You say you have filed, in this case, the transfer from the Belding heirs to yourself?

A. I will do it. I have the conveyance of recent date. One was signed in Texas and the others here. Albert signed his, George signed his and Henry signed his. *It has been within the past three months.*

This being true, and it is nowhere contradicted, the assignment was obtained of three-fourths of the Belding pre-emption claim in November, 1877, *after the passage of the act of March 3, 1877.*

Gaines was also interrogated before the Hot Springs commission as to the character in which he executed the leases.

Q. (P. 105, Term No. 310.) By what right did you assume to lease this ground, a right of yourself, or as the agent of the Belding heirs?

A. Myself; some of them were in the name of the Belding heirs and some in my individual name.

Q. Did you lease it as your own ground?

A. By representing the Belding heirs, being one of those heirs, and representing myself individually.

On the 18th of February 1878 (p. 154–5, Term No. 308), Gaines testifies in answer to questions as follows:

Q. Have you ever claimed the property described in this petition (before the commission) as your individual property?

A. I represented my wife's interest and the interest of the other three heirs, and took possession of the vacant lot and built those log cabins.

Q. I understand you to say that you regarded this property as belonging to the Belding heir? (P. 155.)

A. I looked upon it as my wife's interest as one of the Belding heirs. There were four heirs interested.

My contention is, that Gaines could not acquire any interest in the pre-emption claim of Ludovicus Belding, or enforce any interest therein which he had not acquired *prior to April 24, 1876*, which would give him any standing before the commissioners. In this I am supported by the Rector-Gibbon case. Ballentine, who was the real party in interest in that case, purchased his claim in 1877, and this court in speaking of that fact said:

"It is very clear that the heirs of Ballentine are not the parties for whose benefit the act of 1877 was passed. He only acquired his claim to the property during that year (1877) by transfer from the original lessees, of their leashold estate. He could not assert *any independent claim acquired after April 24, 1876*. The act, in terms, declares that no claim to purchase any portion of the reservation *accruing after that date*, shall be considered by the commissioners."

If that is the proper construction of the act of 1877, and I think it is, and the rule announced in the Rector-Gibbon case is adhered to, then *three-fourths of the claim of the appellees must fall*, for it necessarily follows that if an interest in a leasehold estate could not be acquired, an interest in a pre-emption claim could not.

The testimony shows that the Belding heirs *did not assert or prefer any claim to any portion of the Hot Springs reservation*. If the act of 1877 granted the Belding heirs any rights, these rights could only be enforced by themselves *and were not the subject of assignment*, after the passage of the act of 1877. That Gaines could join with his wife, who was one of the heirs, is not denied, but it is denied that he could assert *the rights of the other three*, under the state of fact shown by the record.

When he appeared before the commission claiming to be the assignee of three-fourths of the Belding claim, he was asserting an *independent* claim *which he did not possess on the 24th day of April, 1876*.

In mentioning this matter I do not wish to be understood as conceding that Gaines is entitled to recover a one-fourth interest in the lots in controversy, for this is contested, but it is stated for the purpose of calling the attention of the court to the fact that if the decrees in favor of Gaines are to stand, that they can only stand for *a one-fourth interest.*

The fifth section of the act of 1877, which fixes and defines the scope of the inquiry, and that to which proof may be directed, uses the words "claimants" and "occupants." The words "*heirs, assigns or legal representatives,*" are not found in that section. This fact, taken in connection with the concluding portion of the section which declares: "No claim shall be considered *which has accrued since the 24th of April, 1876,*" negatives the idea that the commissioners could exercise jurisdiction over claims *which were assigned after that date.*

The fifth section, by the absence of words indicating an intention that an assignment could be made, taken in connection with the eleventh section, which declares: "That any claimant or occupant, *his heirs or legal representatives,* in whose favor the commissioners have adjudicated, shall have the sole right to purchase, etc.," clearly shows that until a right *had been found to exist,* there should be nothing capable of being transferred or assigned.

It may be said that the enforcement of this doctrine would leave some of my clients without title. Not at all. The first section of the act of June 16, 1880, cures all such defects, so far as my clients are concerned, and if it does not, the question is one between them and the United States, *and not between them and the appellees.*

THE RECTOR-GIBBON CASE DOES NOT FURNISH A RULE OF DECISION FOR THE CASES AT BAR.

It will be impossible to argue these cases without making reference to the opinion of this court in the Rector-Gibbon case, 111 U. S., 276, and the construction of the act of 1877, therein contained. It will be insisted that the rule of construction adopted in that case, is decisive of the questions presented by the appellants.

At the threshold, I am willing to admit, if the court had the power to decide anything in the Rector-Gibbon case at all, it is decided correctly. While I admit the case was decided correctly, I do not assent to the proposition that this or any other court could divest title out of one in whose favor the award was made, and vest it in another, even if the decision of the commission was wrong.

In *Railroads v. Schutte, 103 U. S., 140,* this court said: "Every statute like every contract, must be read by itself, and it no more follows that one statutory contract is like another, than one ordinary contract means what another does."

The Rector-Gibbon case turned on the construction of a lease,

and it no more follows that one lease is to be construed like another, than that one contract means what another does.

The lease in the Rector Gibbon case stipulates that at the end of the term the *lessor* should have the right to take the improvements by paying two-thirds of their first cost; that if the lessor should not pay this amount at the end of the term, the lease should be extended on the same conditions, until he should make the payments, giving ninety days' notice of his intention to terminate the lease.

The proof was, that Rector gave the notice, that he was ready and willing to pay, but he could never get the lessees to give or name the amount.

The leases, in the cases at bar, declare that they may "be renewed, from year to year, *until the title to the Hot Springs quarter section is settled*, * * * and that all buildings and improvements that may be erected on said lots by the lessees, *may be removed therefrom, by the lessees, at any time within thirty days after the expiration of the same.*"

In the Rector-Gibbon case, the improvement became the property of the *lessor* by the election and the *terms of the contract*. In the cases at bar, the buildings were to remain the property of the *lessees without any stipulation for purchase by the lessor.*

In the Rector-Gibbon case, the court found that Rector was the *owner of the improvement* and gave him the lot. In the cases at bar, the court finds, as did the commission, that the buildings belong, *not to the lessor*, but *to the lessees*. In one case, the right to purchase the lot, falls to him who was *the rightful owner of the improvement*, and in the cases at bar, the person who is found to be *the owner of the improvement* is declared to be a trustee for one who did not make or own the improvement.

In the one case the lease created a contract whereby the lessee undertook to build a house *for the lessor*, while in the case now under consideration the contract was that the lessee might build a house for himself.

The questions discussed in the Rector-Gibbon case were as to the nature of the grant contained in the act of 1877; to *whom* it was made, and whether *the decisions of the commissioners were final.*

Four of the judges of this court were of the opinion that the award of the commissioners was final, expressing no opinion as to the nature of the grant, and five were of the opinion that it was not, and that, for errors of law, its decisions might be reviewed.

I will show you, as has been stated before, that Congress, during the pendency of the bill, now known as the act of 1877, refused to allow an amendment to be made to the bill *which granted the courts jurisdiction to review the awards of the commissioners*, and that *after* the awards were made, it was again appealed to, to allow the courts to review the awards, *and that it again refused*, and will show you that Congress was asked to amend the act of 1877, during its pendency, to make it mean what the court, in *Rector v. Gibbon* said it meant,

and that Congress refused to allow the words, the court placed in the act of 1877, to become a part of it, because *it changed the grant*, from the persons on whom they intended to bestow the bounty, and confered it on persons *who had asserted title*, instead of those *who had made improvements*.

I am not influenced to indulge in the line of argument, which will hereafter be pursued, from the fact that the personel of the court has changed since the decision in the Rector-Gibbon case, for I shall not indulge in argument that I would not have indulged in, if the personel of the court had remained the same.

I am not here to make a wanton attack on the Rector-Gibbon case, nor to disturb matters set at rest by that decision, but to protect the interests of clients, by calling, in a respectful manner, the attention of the court to some matters that were not called to its attention before, with a feeling of confidence, if they had been, the decision might have been different.

The fact that neither Rector or Gibbon could acquire title under the act of 1877, and that no claimant at Hot Springs acquired title under the act of 1877, does not seem to have been called to the attention of the court.

The fact that Congress by an act entitled, "An act for the establishment of titles in Hot Springs, and for other purposes," approved June 16, 1880, by direct enactment, authorized these appellants to purchase the lots in controversy, seems to have been overlooked in the Rector-Gibbon case. The first section of the act to which I allude is as follows:

"That any person, his heirs or legal representatives, in whose favor the commissioners appointed under the acts of Congress of 1877, and 1878, relative to the Hot Springs of Arkansas, have adjudicated, shall have *the sole right* to enter and pay for the amount of land the commissioners may have adjudged him entitled to purchase, within eighteen months next after the expiration of the notice required * * * at 40 per centum of the assessed value of said lands as placed thereon by said commissioners."

All titles at Hot Springs are based on the act of June 16, 1880, and not on the act of 1877. The difference between these acts is, that under the act of 1880, the right to purchase the lot, comes by a declaration of *Congress*, and that the persons in whose favor the commissioners have adjudicated shall have the sole right to purchase, while under the other, the right to purchase, comes from the award of the *commissioners*.

It is true that the commissioners have adjudicated that certain persons should have the right to purchase the lots in controversy, but it is also true, that *after that adjudication*, Congress took the whole question of awards under consideration, and by a direct and express enactment declared the appellants should have the sole right to purchase. The question now is, not whether the court can

review the *awards of the commissioners*, but whether it can review and set aside *the award of Congress.*

If the language of the opinion in the Rector-Gibbon case be read in the light of the facts disclosed by the record, it furnishes no rule of decision for the cases now before the court. But if you take an isolated sentence like this: "Whatever the lessees and those under them did, by way of improvements on the leased premises, inured to the lessor's benefit as absolutely and effectually as though done by himself," and apply it to a case where the improvements, under the lease, were to remain the property of the *lessees*, you establish a rule of decision that violates the obligation of the contract, and takes the property of one man away from him and gives it to another. You turn the act of 1877 into an act of confiscation, instead of that of pre-emption.

If the leases, in the cases now under consideration, had a similar provision to that exhibited in the Rector-Gibbon case, there are many expressions of opinion to be found that would apply to the cases at bar, but there is no such lease. I have a right to assume, and shall assume, that the court intended its language to be confined to the case made by the record, and was not attempting to fix a rule of decision *in cases not before the court.*

It is said in the opinion that, "lessees under a claimant or occupant *holding the property for him* and bound by their stipulation to surrender it on the termination of their lease, stand in no position to claim an adverse and paramount right to purchase. Their possession is his possession." If this sentence be taken as an interpretation of the act, *without reference to the facts disclosed by the record*, in which the language was used, the appellees could draw some comfort from it, but confine it to a case where the lease gave the improvements to the *lessor*, and where the right to purchase the lot followed *the ownership of the improvements*, it furnishes no rule of decision in a case where one claims the lot and where it is adjudged the improvements *do not belong to him.*

When the court makes use of the expression, "holding the property for him," the word *property* is used in its broad sense, covering the improvements as well as the lot. It is not used in its narrower sense and confined to the lot itself.

After the 24th of April, 1876, there was no such thing as *holding* the property *for the old claimant*, unless the old claimant was the legal or equitable owner of the improvements on the lot. The relation of landlord and tenant was on that day dissolved *by the terms of the contract.* The title to the property on that day was in the United States, and it soon thereafter took possession by its receiver; and to say that the old tenants of Gaines "held possession for him," *while they were atorning to and paying rent to the United States*, is to extend the relation of landlord and tenant beyond the confines of known law. Nor is it true, as a proposition of law, that a former tenant could not acquire title from the new landlord.

But it may be said that the appellee claims the improvements made on the lot in controversy. There is no pretense that the appellee ever acquired any of the buildings erected under leases, by purchase or contract, as was the fact in the Rector-Gibbon case. The claim is that Gaines acquired the buildings and improvements under a forfeiture clause in the lease. The allegation in the bill is:

"Said lessee failed to remove said buildings and improvements erected by them at any time within thirty days after the expiration of the lease, and by virtue of the provisions of the lease said buildings and the improvements erected by the lessees became the buildings and improvements of W. H. Gaines."

If the theory of the allegation was true, the conclusion is wrong, as Gaines, at the time of the making of the leases and while the leases appear to be made in his name, swears he was not acting for himself, but for the Belding heirs. This being true, if there could be a forfeiture it would be for *their* benefit and not *his*.

Now let us see when the leases terminated. The lease, and all of them are alike, is as follows:

"To have and to hold the said lot unto the lessee for a term of one year, from the date hereof, to be renewed, from year to year, *until the title to the Hot Springs quarter section of land is settled.* * * * All buildings which the lessee may erect on said lot during the continuance hereof may be removed within thirty days after the expiration of this lease."

If this court had adjudicated that the title to the Hot Springs quarter section belonged to the Belding heirs, and after such adjudication the tenants had failed to remove their buildings, there might be something in the present contention, but to say the buildings and improvements became the property of Gaines, because they were not removed within thirty days after this court decided the title to the property was in the United States, is arrant nonsense.

Until Congress chose to recognize a right of property in the buildings and improvements in some one, they belonged as absolutely to the United States as the land on which they stood. It could have directed that they should be burned, or it could direct that they should belong to those who had formerly been recognized as the owners. That Congress did confer a right of property in the buildings and improvements on some one is apparent from the thirteenth section of the act of 1877, where it is declared: "That any claimant or occupant who does not desire to purchase the lands adjudicated to him or her, *shall have the right to remove any improvements* made on said land at his or her own cost, before the time fixed for the payment of said lands." It is also apparent from the eighth section of the act, where it is declared that in cases where it was necessary to straighten or widen streets, and buildings or improvements should be taken or injured in the exercise of that power, a certificate of the property so taken or injured should be given showing the amount of such injury, and by subsequent legislation these

certificates were made receivable as so much cash in the purchase of lots. [Sec. 2, act of 1880, vol. 21, p. 288.]

The bill further alleges that "said lessee took possession of said land under and by virtue of said lease, and occupied the same, *under said lease, until the first of June, 1876.*" At page 53, term No. 305, Gaines swears that "when A. O. Morgan, the United States receiver, took possession I was the first man on the reservation to turn my property over to him. I turned over all property held by myself, both that held in person *and that held by my tenants.*"

The forfeiture which the appellee claims, as will be observed, is not one that occurred thirty days *prior* to the day *on which the title to the Hot Springs quarter section was settled*, but is for a forfeiture that accrued *after it had been settled*. Gaines says they held under the leases until June 1, 1876, that is, thirty-seven days after the title to the Hot Springs quarter section was settled. His claim, therefore, is that because the appellants did not remove their buildings and improvements from the ground within thirty days *after he turned them over to the receiver* they became his.

Before the 24th of April, 1876, there were two estates; the fee and the leasehold. On that day the fee was declared to be in the United States. On the leasehold were improvements which the lessees, under their lease, had the right to remove, but being fixtures they could not be removed without the assent of the new landlord. If the buildings on the lots had belonged to the *lessor*, and the old tenant remained in them, I concede, that after the passage of the act of 1877, the commissioners should have treated the occupant in the light of one holding over. Not because the relation of landlord and tenant existed during that period, but because the right to purchase the lots, was awarded to the former owner *of the improvement*. The right to the lot, as well as the improvement, had been lost. Congress granted the *improvement* to the *former owner*, regardless of past relations.

In the case where the improvement belonged to the lessor, it conferred on him the right to purchase the ground, on which the improvement had been made. But if the improvement belonged to another than the *lessor*, the right to purchase went to him who owned it on the 24th of April, 1876. The right to purchase flows from and is bottomed on an *improvement*. No improvement, no lot.

The contention of the appellee is, that the *possession* which the appellant had, of his own house, was the possession of the appellees; that that possession was under a lease from *him*, and that whatever a donor should elect to present, of right, must go to the landlord. The bald, naked claim is, that having accepted a lease, the term of which expired, that the new landlord could not make a present to his old tenant, or give him a right to purchase the land.

The appellee could not avail himself of an improvement made by another unless he was the owner of it. In some respects this case

is not unlike that of *Pollards Heirs v. Kibbe*, 14 Peters, 367. The act which was to be construed was as follows:

"That all the right and claim of the United States to so many of the lots of ground, east of Water street, now known as water lots, whereon *improvements* have been made, be and the same are hereby vested in the several *proprietors* and *occupants* of lots *fronting on the river Mobile, etc.*"

The question was, whether the act gave the land to the person owning the property *opposite* the water lot, when the improvement *was made by another than the owner of the opposite lot*. Justice McLean in speaking of the intent of the act said:

"Two things must concur to give title under this act; and these are, (1) proprietorship of the front lot, and (2) improvements on the water lot. But by whom must these improvements be made, or owned at the passage of the act? The act does not specify; and the court instructed the jury that if improvements were made, *it was immaterial by whose they were made*. Can this be the true construction of the act? Congress did not intend to give the *proprietor* of the *front lot*, the water lot, unless it was *improved;* nor did they intend to give the person *who had improved the water lot*, unless he was the *owner* of the *front lot*. * * * Can it be supposed that Congress intended to give the water lot to the proprietor of the front lot *for the reason that the water lot had been improved by a stranger?* In other words, that Congress by a solemn act of legislation, would give a lot of ground to one man *because another had improved it*. This is the principle asserted by this construction, and it is an unjust and so directly opposed to the legislation of Congress, in regard to pre-emptive rights, on the grounds of improvements, that I am unwilling to sanction it. There is no instance in the entire legislation by Congress where they have sanctioned such a principle. *The policy has been to secure to the individual the benefit of his own labor and expenditure.*"

Two things had to concur under the act of 1877 to entitle one to become a purchaser. First, he must have been the owner of an improvement on the reservation on the 24th of April, 1876, and second, the same must have been on some one of the lots laid out by the commissioners. To have been the owner of an improvement that was on land needed for a street, or as a part of the reservation, gave him no right to be adjudged the right to purchase any portion of the reservation. In such a case, all he got was a certificate upon which he obtained the value of the improvement destroyed or taken.

The proof is undisputed that the appellants prior to the 24th of April, 1876, made an improvement upon lots laid off by the commissioners, or that they were purchasers from those who did. There is no language in the act from which an inference can be drawn that Congress intended to confer, on one of the old claimants, the right to purchase a lot because another person had improved it. In *Pollards Heirs v. Kibbe*, the court said the right to purchase the

water lot depended on ownership of the front lot, and improvement of the water lot; that ownership of the front lot, and improvement of it by a stranger, would not pass title to either. In the case at bar, color of title or claim of right under a pre-emption, gave nothing. Without improvement, not upon the quarter section, but on the lot, there could be no award. That which induced Congress to grant a preference right to purchase, was the fact of improvement.

At this point it may be well to ascertain what Gaines' attitude was after the decision of this court, that is, after the 24th of April, 1876. Gaines says (p. 108, Term No. 309): *"I made no claim to anything after the court decided against me. I disclaimed owning anything * * * until Congress passed the land law*, which I think gives me a perfect right to the property. *I do not say I am entitled to it."*

After the decision in the Court of Claims, this provision was inserted in some of the contracts in relation to the leased property, to wit:

"And if the title to said land shall have been settled against the party of the first part (Gaines) and the party of the second part shall have complied in every particular with his covenants herein, and in the aforesaid indenture of lease, of even date herewith, up to the time the party of the first part is dispossessed of said house, by the United States or other parties, then, in that event the party of the second part shall have, *so far as the party of the first part is concerned, all the benefits accruing to him by virtue of occupation of said house and the ground upon which it stands.*" (Term No. 309, p. 122.)

Again Gaines was asked (p. 108, Term No. 309): "Have you not told them in these conversations that you had no claims against them whatever in reference to the land, *unless your pre-emption certificate should be sustained?*"

A. *I think likely I have made such statements.*

This testimony and the condition expressed in the contract quoted from, shows that Gaines treated and was to treat the leases at an end, *if his contention on the Belding claim was not sustained.* It shows that he abandoned *all claim to the leased property after the decision of the Supreme Court.* If he did, how could there be a forfeiture *under the lease after the 24th of April, 1876?* Could the relation of landlord and tenant be restored after thus being dissolved, *without the assent of both parties?* If the relation of landlord and tenant was dissolved by the expiration of the lease, as Gaines swears it was, *how could there be a forfeiture under it?*

The question of whether there was a forfeiture under the lease of the improvements of the lessees, as was stated before, is not open to inquiry in this court. The court below adjudged and decreed in all the cases, that the appellees should pay for the improvements made by the lessees. That portion of the decree has not been appealed from, and is a final adjudication that Gaines was not the

owner of the improvements on the lots on the 24th of April, 1876.

He gets title, to the *improvements*, not by an adjudication that he was the rightful owner of them on the 24th of April, 1876, *or by virtue of the forfeiture claimed*. Had this been true, *it would not have been adjudged that he should pay for them.*

To give the lots in controversy to Gaines, is to give them to one the court finds, as a matter of fact, never made any improvement thereon. To give them to Gaines under such a finding, is to disregard the letter and spirit of the statute. To give them to Gaines, is to take from appellants, that which the Congress of the United States, by a solemn act, declared they should have. To give them to Gaines, is to say that the *courts* and not *Congress* have the sole right to dispose of the public domain.

THAT IT IS APPARENT, FROM THE LANGUAGE OF THE ACT OF 1877, THAT CONGRESS INTENDED THE ADJUDICATIONS OF THE COMMISSIONERS SHOULD BE FINAL, AND THAT THIS INTENT IS MADE MANIFEST FROM FOLLOWING THE FORM OF STATUTES THAT THIS COURT FOR MORE THAN A QUARTER OF A CENTURY HAD DECLARED CREATED A BOARD BELONGING TO THE POLITICAL DEPARTMENT OF THE GOVERNMENT, AND WHOSE ADJUDICATIONS COULD NOT BE REVIEWED BY THE COURTS.

Boards of commissioners, similar to that created by the act of 1877, date back to a period, in the existence of the government, anterior to the birth of any member of this court. They are not new devices even if their history is forgotten.

The United States owned a tract of land two miles square. That tract was occupied by nearly one thousand persons, who had improved the same by erecting houses and other buildings for their convenience thereon. By a decision of this court, it had been declared that none of them had title to the ground on which their buildings were situate. Not only this, but under the provisions of the act of 1870, a receiver was placed in charge of the buildings and land who exacted rent from the persons occupying the same, in the name and by the authority of the United States. On that land was a great health resort, which public sentiment demanded should be kept open and accessible to the people.

Congress did not feel that it was honest to retain and rob the persons on the reservation of the houses and improvements which they had erected. Following the course of a long line of precedents, it concluded it would give to the persons *making or owning the improvements*, the preference right to purchase the ground on which their improvements were situate. There had been contention about the *title* to the *land*, or a portion of it before, and it was not improbable there would be disputes as to the ownership *of the improvements* and the *extent of ground attached to them.* It never occurred to Congress that any question as to *title*, or right of occupancy

could arise, as the question of title was believed to have been settled by the decision of this court, and none of *occupancy*, for it was *in possession with its receiver*. It therefore created a tribunal and clothed it with power, not to investigate *a question of title*, or *right of occupancy*, but to ascertain what *improvements had been made upon the reservation prior to the 24th of April, 1876*, and *who* was the *owner* of the same on that day, and directed that the commissioners should adjudge *that* person the right to purchase the particular tract of land on which his improvements had been erected.

It might have conferred the power of determining such rights upon the register and receiver of the land office of the district in which the lands were situate. If it did this, Congress well knew that an appeal was allowed from the decision of these officers to the Commissioner of the General Land Office, and from him to the Secretary of the Interior. It knew that the decisions of all the persons mentioned, for errors of law, could be reviewed by the courts. To undertake to settle conflicting claims in that manner, would lead to innumerable appeals, and never ending litigation. Not only this, but it, instead of settling anything, was calculated to retard, delay and prevent the improvement of the property itself. The fact that the duties prescribed by the act of 1877, were not conferred on the register and receiver, is a circumstance from which an inference arises, that Congress did not adopt that course because of the delay which would follow from appeals.

An examination of the legislation creating boards of commissioners, and that over which they were to adjudicate, shows that the adjudication of the commissioners, was confined to lands within the control of Congress and which was not within the control of the land department, for purposes of sale, and that the object of Congress was to prepare the lands for sale. To give the lands in charge of that department without first settling the right of the parties thereon, who had acquired rights either under a treaty, or under some one of the many pre-emption acts, would lead to endless confusion and litigation. To avoid that confusion and litigation, and to the end that the lands placed under the control of the land department for sale, should not be clouded with claims, boards of commissioners have always been created and empowered to settle such claims before exposing the lands for sale. It is for this reason that all of these acts require the claims to be filed within a short period. When the commissioners had performed their duties and made their report, the land department was informed what lands had been awarded, and to whom, and the residue belonged to the United States freed from all claim.

This is what Congress was trying to do at Hot Springs. Before it could direct the sale of any lots, arising from the subdivision of the reservation into lots and blocks and make perfect title thereto, it had to ascertain how many it had, where they were located, and who had the right to purchase under the preference given by

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the act of 1877. In doing this, it followed the only course ever pursued by it, in the early days of the republic, where the same conditions existed. As has been stated, the object of these tribunals was to dispose of all conflicting claims, before the lands were exposed to sale. In this fact is found the reason why the adjudications were to be final. If they were not to be final, there was nothing to be accomplished by their creation, and the government is put in the attitude of holding a court for the settlement of claims, whose adjudications are a snare and a delusion, and of selling litigation, instead of lots. This court, during the existence of the legislation alluded to, held that the adjudications of such tribunals were final and conclusive. This was contemporaneous construction and is entitled to great weight.

In all the States that were carved out of the Northwestern Territory; those of the Louisiana purchase and Florida, boards of commissioners have been created by Congress to perform duties similar to those imposed on the Hot Springs commission. In some States they were confined to adjudicating a certain class of claims and required to lay their findings before Congress for final action. In many of them, however, the adjudications absolutely dispose of the public domain and this court has held their adjudications were final. California is the only State where a board of commissioners has been created whose decisions do not amount to anything. In that State, by reason of the terms of the act, the duties of the commissioners resemble those of a coroner's inquest, more than anything known to law. They were authorized to issue subpœnas, administer oaths and to decide as to the validity of claims and report their decisions to the district attorney of the district in which the decision is made. The district attorney was authorized to appeal, and so was the claimant, to the district court where the case was tried, not on the record, but *de novo*. The testimony adduced before the commissioners could be used at the hearing in the district court, and the district attorney used it for his guidance about as he would the testimony taken by a coroner's inquest. In every other State in the Union, where these commissions have been created, and there are many of them, this court, where the question of their powers and the conclusiveness of their findings have been questioned, except in the Rector-Gibbon case, has held that *they were special tribunals, clothed with special powers, acting for and on behalf of the* POLITICAL *department and that the courts had no control over their actions.*

It is said in Rector-Gibbon that "the powers of the commissioners, under the act of 1877, are not essentially different from those of the receiver and register of the land office." The conclusiveness of the findings of a board are not to be determined by the comparison of the similarity of the powers of one tribunal with another, but are to be ascertained from the words of the act creating them. The act creating the board of commissioners declared their adjudi-

cations should be final, and says those of the register and receiver are not.

Again it is said: "Had Congress intended to vest the commissioners with absolute discretion in awarding the privilege of pre-emption of the several parcels of land, its language would have been different; it would not have required an examination of witnesses, a regard for existing boundaries, and a determination of rights." That which is assigned in the Rector-Gibbon case, as a reason to show such adjudications were not intended to be final, this court has on many occasions said was evidence of the fact that such adjudications were intended to be final. A lack of means and power on the part of a tribunal to make that investigation which should precede final judgment has been held, was evidence of an intent that the judgments of such a tribunal were not final, but it has never before been announced that a grant of all the means and power necessary to make a proper inquiry upon which a final decision could be intelligently made, was evidence of an intent that it was not to be. I understand this court can reverse itself and change a rule of construction, no matter how long established, but when it departs from a long line of unbroken decisions, without reason or explanation, I have a right to assume that the court's attention was not called to them, especially where there is nothing in the opinion that indicates its attention was so called.

I will now proceed to call the attention of the court to a few of these decisions. It may not serve any useful purpose, but it will show that if the court is infallible it has not been consistent.

Bear in mind that Congress was dealing with lands to which no right, either legal or equitable, had attached in favor of those who afterwards became claimants. Bear in mind that the claims which were afterward asserted by the claimants, were founded on a mere *gratuity* and not a *right*. Bear in mind that the act granting the gratuity also declares *who* shall dispense it; that it makes no provisions for it being dispensed by any other tribunal or person, and peremptorily declares their decision shall be final. That Congress had the power to do this will not be denied

The State of Alabama passed an act, very similar to the act of 1877 in principle, under which commissioners were appointed to ascertain what persons were entitled to the preference granted by the act. The act granted pre-emption rights to a certain class, and it was made the duty of the commissioners to determine *who* of the class named were entitled to the benefaction. As usual in such cases, wherever a gratuity is bestowed persons will be found who think they have not received their full share, and one of the disappointed persons instituted suit in the courts of the grantor to determine his right *to a gratuity*. It was contended there, as here, that the sovereign making the grant of the gratuity, *could not divest the courts of the country of jurisdiction*, and that the provision of the act which made the adjudication final, *was unconstitutional and void*,

but that the *granting part was valid*. In response to the audacity of the mendicant, the Supreme Court of Alabama said:

"The law providing for the mode of sale also points out *who* are to determine whether those who apply to purchase, are within its provisions, and declares that their decision shall be final, and this, it is insisted, could not be done. Why? Because, it is answered, the law vested the right to a preference in the land, in the persons coming within the provisions of the act, aad thereby gave them *rights*, which the court will protect. But the law must certainly be taken altogether. Upon certain conditions peculiar privileges are granted to individuals; one of these conditions is, *that certain men shall say who are entitled to them*. Certainly they have no *right or privilege* UNTIL THIS IS DONE. Suppose the law had provided that the poorest people in the State should have the preference; that the commissioners should determine who were entitled, under this provision, and their decision should be finally given. This, certainly, would have been a benefit, gratuitously bestowed, and the poor rejected by the commissioners could have no redress in this court. I am of opinion that the part of the law giving preferences to one person over another in entering public lands, *is a matter of favor;* that the General Assembly had a right to prescribe the terms on which the favor would be granted, *and having said that the commissioners, and they alone, shall determine on whom the bounty of the State shall be conferred, no person has a right to appeal from their decision.*"

Bell v. Payne, 2 Stewt. (Ala.), 413.

The rule laid down in Bell v. Payne is that which, in my opinion, should be applied to the case at bar. The grant and the persons who are to bestow it; that is, who are to adjudge, are to go hand in hand. If you separate them and give to another tribunal the power to determine to whom the bounty shall go, you destroy the terms and conditions on which the grant was made.

THE ACT IN RELATION TO THE TOWN OF GALENA, ILL.

The act of February 5, 1829 (vol. 4, p. 334), authorized the laying off of the town of Galena, Illinois, and declared: "Each and every person or his, her, or their legal representatives, who shall heretofore have obtained from the agent of the United States a permit to occupy any lot or lots in said town of Galena, or who shall have actually occupied and improved any lot or lots in said town, or within the tract herein authorized to be laid off, shall be permitted to purchase such lot or lots," etc. On the 2d of July, 1836 (vol. 5, p. 79), Congress passed an act authorizing the President to appoint a board of commissioners to be composed of three persons. The second section of the act declares: "That said commissioners shall also have power to hear evidence and determine all claims to lots of ground arising under the act to which this is an amendment (February 5,

1829), and for this purpose the said commissioners are authorized to administer all oaths that may be necessary, and reduce to writing in support of claims to pre-emption presented for their consideration; and when all testimony shall have been heard and considered, the said commissioners shall file with the register and receiver of the land office, at Galena, the testimony in each case, together with a certificate in favor of such person having the right of pre-emption; and upon making payment to the receiver at Galena, for the lot or lots to which such person is entitled, the receiver shall grant a receipt therefor and issue certificates of purchase to be transmitted to the general land office, as in other cases of the sale of public land."

The powers conferred upon the commissioners, in relation to the town of Galena, are not as full as those conferred on the commissioners at Hot Springs. No power is given to send for persons and papers, and the act does not declare in so many words, their decision shall be final.

Justice Catron, in speaking of the powers of the commissioners, under the act relating to the town of Galena, and the nature of such tribunals said:

"The act of 1836, required the commissioners should *hear* and *determine* all claims to lots of which a preference of entry was sought; they had power conferred on them to administer oaths and take evidence, and when all the testimony was heard and considered, they were to file with the register and receiver, the whole testimony in the case, together with a certificate in favor of each person having the right to purchase and on payment being made to the receiver, the register is ordered to issue a certificate of purchase to him to whom the right of pre-emption had been adjudged, and the remaining lots were to be exposed to sale. It was *the political power* that was dealing with this property. Congress could award it either for a consideration, or confer it on any one that they desired should have it. The awards were made through a tribunal exercising *the political power*, and whose adjudications were conclusive of the right to purchase; *nor had the courts of justice any jurisdiction to interfere.*"

Morehouse v. Thelps, 21 How., 302.

In the case of *Bennett v. Farrar, 2 Gilm. (Ill), 598*, a bill was filed to set aside a pre-emption certificate granted by commissioners under the act of July 2, 1836, as to certain lots in Galena. It appears that one Bennett, as did the county authorities, filed a claim to the same lot. The commissioners decided in favor of the county, and the county subsequently obtained a patent. After the issue of the patent, a bill was filed to vest title in Bennett, from which it appeared the commissioner, had awarded the lot to the county, and the court, on demurrer to the bill, said:

"We are of opinion that the rights set up in the bill are *res adjudicata*, and therefore, there is no equity in the bill."

Here we have two adjudications under the same act, and if there is any difference, in principle, between the Galena act, and that in relation to Hot Springs, I confess my inability to see it. Larger powers are given to the commissioners, under the Hot Springs act, than were given under that in relation to Galena. The power to send for persons and papers, on their own motion, was not given by the Galena act, nor is there any language found in it which in so many words says *their decision shall be final*, yet the Supreme Court of Illinois and this court held that the adjudications of such commissioners were *final*. If the POLITICAL power was dealing with the lots at Galena, the same power was dealing with the lots at Hot Springs. The same instrumentality was employed, in the one case, as in the other. In each case the commissioners were appointed by the President, and under the authority of an act of Congress, the object of which was to dispose of the public domain. If the decisions of the commissioners, under the one act was final, I cannot see why they were not under the other.

THE FIRST ACT PASSED BY CONGRESS CREATING A BOARD OF COMMISSIONERS.

The act of March 3, 1801 (U. S. Stat., vol. 2, 112), gave to any person who had made any contract, in writing, with John Cleves Semmes (lands lying in Ohio) prior to January 1, 1800, a preference to become a purchaser. The fourth section of the act declares: "That the receiver of public moneys and two other persons to be appointed by the President, shall be commissioners for the purpose of ascertaining the rights of persons claiming the benefit of this act. * * * That they shall meet at Cincinnati, and they or a majority of them, shall have power to hear and decide, in a summary way, all matters respecting such claims; also to administer oaths and examine witnesses, and such other testimony as may be adduced, and to determine thereon according to justice and equity, which determination shall be final."

The act of March 3, 1807, relating to certain lands in Michigan (U. S. Stat., vol. 2, p. 437), makes the secretary of the territory and the register and receiver a board of commissioners, and requires them to take an oath as such--requires them to meet at Detroit, and then declares:

"The said commissioners, or a majority of them, shall have power to hear and decide, in a summary way, all matters respecting such claims (occupants on lands to which the Indian title had been extinguished), to compel the attendance of witnesses, to administer oaths and examine witnesses, and such other testimony as may be adduced, and to determine thereon according to justice and equity."

If the courts of Ohio or Michigan were ever called upon to adjudicate as to the powers of these commissioners and the conclusiveness of their adjudications I have not been able to find them, and

they are quoted first, because the Ohio act is the first act that created a board of commissioners, and second to show, that in drafting the act of 1877, Congress went back to these and other acts for its precedent in drawing the Hot Springs act, and in conferring the powers and defining the duties of the commissioners.

That Congress did not regard the duties imposed by law, on the register and receiver, of the character as those imposed upon the commissioners, appears from the act of March 26, 1804. (U. S. Stat., vol. 2, p. 277.) The second section of the act provides for the appointment of a register and receiver. The fourth section then declares: "That the register and receiver shall be commissioners for the purpose of examining claims of persons claiming land by virtue of the preceding sections." It then declares that the register and receiver shall take an oath of office, as commissioners, and prescribes the form of the oath.

Here we find Congress creating the offices of register and receiver, and that of a board of commissioners in the same act, and requiring the register and receiver to take a separate oath, as commissioners, and perform and discharge the powers so conferred. If the powers and duties of the register and receiver were of the same grade and dignity of that of the commissioners, why did not Congress content itself with one Dromio, instead of two?

THE BOARD OF COMMISSIONERS IN MISSISSIPPI.

The Mississippi territory act is as follows (March 3, 1803, U. S. Statutes, vol. 2, p. 229):

"SEC. 3. That every person, and the legal heirs and representatives of any person, who being the head of a family, or above the age of 21 years, doth at the time of the passing of this act, inhabit and cultivate a tract of land in said territory, * * * shall be entitled to a preference in becoming the purchaser from the United States," etc.

"SEC. 6. That the register of the land office in Adams County, and two other persons, who shall be appointed by the President of the United States, shall be commissioners for the purpose of ascertaining the rights of persons claiming the benefit of this act, and the said commissioners shall, previous to entering upon the duties of their appointment, subscribe the following oath; * * * and shall have power to hear and decide, in a summary manner, all matters respecting such claims; also, to administer oaths and examine witnesses, and such other testimony as may be adduced, and to determine thereon according to justice and equity; which determination, so far as relates to any rights from this act, shall be final; * * * and when it shall appear to them that the claimant is entitled to a right of pre-emption by virtue of the third section of this act, they shall give a certificate thereof."

The powers of the commissioners created under this act and their

nature was under consideration in *Ross v. Barland, 1 Peters, 667*; first before the courts in Mississippi, and afterwards by writ of error in this court. A bill was filed to vacate a patent granted on a certificate issued by a board of commissioners created under the above act. A demurrer was interposed to the bill which was sustained by the Mississippi courts and by this court. The party seeking to vacate the patent, claimed under purchase from the government and on a senior patent. In disposing of the case, this court said:

"The law gave them (the commissioners) power to hear and decide *all matters respecting such claims and to determine thereon according to justice and equity, and declared their deliberations shall be final.*"

In the case of *Brown v. Jackson, 7 Wheat., 240–4*, this court was called upon again to construe and declare the conclusiveness of the adjudications of a board of commissioners acting under the authority of the act of March 21, 1814, and that of January 23, 1815, and the court said:

"A proper decision of this question will depend not so much on an examination of the correctness of the several acts and doings of the commissioners, *as of the powers conferred on them by law;* for, *as no appeal is given by any of the acts of Congress on this subject to any other tribunal, and as the parties concerned have submitted to the jurisdiction, this court claims no right to review or disturb any judgment or decision in any of the cases in which they (the commissioners) have acted within the authority delegated to them.*"

The court then states the powers and duties of the commissioners under the acts in question, and that which the commissioners decided, showing that the question was one upon which the commissioners had the power to decide, and say:

"A decision of this question was clearly within the power of commissioners. The act made no distinction between legal and equitable claimants. To satisfy the words of the act it was sufficient that both parties were claimants, and these claims were found to conflict with and be adverse to each other, as was the case, *the commissioners were to finally adjudge and determine on them.*"

It will be observed that the court disclaimed the power to examine or review the decision of the commissioners, in a case where it appeared the question decided was one which, under the law, was submitted to them.

That the question of *who* should be awarded the right to purchase was, under the law, submitted to the Hot Springs commissioners will not be denied. In that case as in this, the parties submitted themselves to the jurisdiction of the commissioners. The court say, "*as no appeal is given by the act, to any other tribunal, this court claims no right to review or disturb any judgment or decision, in any case in which the commissioners have acted within the authority delegated to them.*" If this court did not have jurisdiction to review the findings of the commissioners *then* and in as much as the constitu-

tion regulating the jurisdiction of this court has not been changed *since that decision*, it may well be asked *where* the power to review such decisions comes *from now*, *when* it was granted, and *where the evidence of it may be found?*

It may be said that it will be found in *Johnson v. Towsley*, *13 Wall.*, *72* and kindred cases. Not so. The reason for the establishment of the rule in *Johnson v. Towsley* will be found in *Minnesota v. Bachelder*, *1 Wall.*, *111*, where it is said:

"The proceedings (before the register and receiver) are *ex parte* and summary, and *no notice is contemplated or provided for* by the pre-emption laws as to parties *holding adverse interests*, nor do they contemplate *the litigation of any right* between the applicant for a pre-emption claim, *with a third party*. The question as contemplated is between the *settler* and the *government*, and if a compliance with the conditions is shown to the satisfaction of the officers, the patent certificate is issued."

In *Johnson v. Towsley*, the court was speaking of the action of the register and receiver, and not of the powers of a board of commissioners, and the distinction between the conclusiveness of the findings of special tribunals and that of the register and receiver is acknowledged in that case, for the court says:

"It is not to be denied that the argument is much stronger when founded on the general doctrine that, when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal within the scope of its authority, is conclusive on all others."

The act of 1877 created a tribunal, not where persons *could litigate at pleasure* but where they were *compelled to come in* and file their claims within six months after the first sitting of the board, or they would be forever barred. There is nothing *ex parte* about that kind of a proceeding. Like the act of 1870, conferring jurisdiction on the Court of Claims, it forever quieted the *claims of the United States* to the reservation *if the claimants did not come in.* It was not a tribunal to pass upon questions between claimants *alone*, but between the *United States and the several claimants.* The parties who claim adverse interests were compelled to come into that court or forever after hold their peace. To say that the adjudications of such a tribunal are to be likened to one where the proceedings are *ex parte*, to one where no notice is required to be given, and where the right to the certificate on which the patent can be had, without bringing the other claimants into court, is to liken an *examining* court *to one of general jurisdiction.*

THE BOARD OF COMMISSIONERS IN MISSOURI.

The commissioners who were authorized to adjudicate under the fourth section of the act of March 3, 1807 (U. S. Stat., vol. 2, p. 440) in the now State of Missouri, were clothed with the following pow-

ers: "Shall have power to hear and decide, in a summary manner, all matters respecting such claims, also to administer oaths, to compel the attendance of, and examine witnesses and such other testimony as may be adduced."

A suit which under the practice act of Missouri was in equity was instituted in one of the circuit courts of Missouri by one who claimed adversely to the decisions of the commissioners under the above recited act. A demurrer was filed to the bill, in the circuit court, and it was sustained because the bill on its face showed the adjudication of the commissioners against the plaintiff. The case went to the Supreme Court of that State where it was affimed. The cause was brought to this court and the judgment of both courts were affirmed. Chief Justice Taney, in delivering the opinion of the court, said:

"Whatever equity the plaintiff may be supposed to have, it is for the consideration *of Congress*, and *not for the courts*. If he has suffered injury from the mistake, or omission of the public officers, or from his own ignorance of the law, the power to repair it rests *with the political department of the government* and *not the judicial*."

Burgess v. Gray, 16 How., 65.

In *Strother v. Lucas, 6 Peters, 772*, the point was urged that the *adjudication* inures *to the benefit of the claim;* that the commissioners decide only the abstract right *as against the government*, without regard to the person who sets up the claim, and this court said: "This view of the case cannot be sustained."

The statute then under construction was the act of March 3, 1807, the fourth section of which authorized the commissioners to confirm where the tract was less than one mile square, and which declares: "which decision of the commissioners, when in favor of the claimant, shall be final against the United States."

The same question was again raised and argued in *Strother v. Lucas, 12 Peters, 410*, and this court said:

"There remains but one other point, on which the court gave their opinion in the former case, which was then made by the plaintiff's counsel in their argument, and has been strongly urged in this case, that the confirmation of the commissioners inured *to the plaintiff's use*. The reasons assigned for this position are, that the only object of the acts of Congress being to ascertain what property had been acquired by individuals, before the cession, the commissioners were to act only on *original* claims, and by confirming the right of the original owner to leave *the derivative right*, under him *entirely open between adverse claimants*. The court were before of opinion that this view of the case could not be sustained; and we are now of opinion *that it is inconsistent with all the acts of Congress, which have organized boards of cammissioners for adjusting land titles*."

The precise contention made in *Strother v. Lucas*, without any

disguise, is made by the appellee. His claim is that we derived the right which enabled us to obtain the award through a lease from him. I have heard it seriously contended that the derivative right of the slave to freedom is from those who inaugurated the rebellion and not to the power that suppressed it. We deny that our right to acquire the lots came from Gaines. We say, as does the former slave, that our *derivative* right to the lot *is from the United States*. The same power that dissolved the relation of master and slave destroyed that of landlord and tenant, and placed the emancipated upon the same footing as citizens of the same country.

If the *derivative* title could not be inquired into in the case of *Strother v. Lucas*, I confess my inability to see how it can in the cases at bar, especially in view of the fact that the appellee has had his day in court. If the decision of the commissioners was final in that case, why it is not in this?

BOARD OF COMMISSIONERS IN FLORIDA.

Under the act of May 8, 1822, in relation to titles in Florida, which provides for the appointment of three commissioners, by the fifth section of the act it is declared (vol. 3, p. 709), "That the commissioners shall have power to inquire into the justice and validity of the claims filed with them, and are hereby authorized to administer oaths; to compel the attendance of witnesses by subpœnas and the adduction of such testimony as may be wanted." As to claims for more than one thousand acres they were compelled to report their decisions to Congress, but as to all claims for one thousand acres and under they had the power of confirmation.

Justice Story in speaking of the character of that tribunal said:

"Their decision within the scope of their authority *is conclusive and final*. If they pronounce the claim *valid* or *invalid*, if they ascertain the amount, then their award in the premises *is not re-examinable*. The parties must abide by it as the decree of a competent tribunal *of exclusive jurisdiction*. A *rejected claim* cannot be brought again under review *in any judicial tribunal*."

Comegys v. Vasse, 1 Peters, 10.

In the case at bar the commissioners decided Gaines had no valid claim to the lots. His claim has been rejected and is not cognizable before any judicial tribunal.

BOARDS OF COMMISSIONERS IN LOUISIANA.

The act of March 3, 1819 (vol., 3 p. 528), in relation to land in Louisiana, to which pre-emption claims had attached, designated the land commissioner in the district and empowered him to adjudicate upon such claims.

The Supreme Court of Louisiana was called upon in *Boatner v.*

Ventress, 8 La. (N. S.), 335, to pass upon the conclusiveness of such adjudications, and the court said:

"The government of the United States has deemed it proper to intrust the commissioners with the power of deciding in case of conflict between *donees* which of them should enjoy this bounty; and, as they had no *title* but that which flowed from the *liberality* of the *donor*, they must take *with such conditions as he thought proper to affix to his donation.*"

In *Purvis v. Harmonson, 4 La. An., 421,* the same court, in speaking of the conclusiveness of the findings of a board of commissioners created to adjudicate the claims to a preference right to purchase, said:

"It would defeat the whole object of law, creating boards of commissioners and introduce public mischief to hold that the commissioners were to act only on original claims, and by confirming the right of the original owner, place the derivative title under him entirely open between adverse claimants."

By the act of August 3, 1846, the Attorney General, Secretary of the Treasury and the Commissioner of the General Land Office were created a tribunal and empowered to decide on certain suspended entries and adjudge to whom patents should issue. They did decide, and in speaking of the conclusiveness and finality of their decision this court, in *Foley v. Harrison, 15 How., 448,* said:

"This decision was made by a special tribunal, *with full powers to examine and decide; and as there is no provision for an appeal to any other jurisdiction, the decision is final within the law.*"

It would profit nothing to pursue this line of decision further, for if these cases are to be rejected, the addition of others would only increase the number of overruled cases.

THE JOHNSON-TOWSLEY CASES FURNISH NO RULE OF DECISION FOR THE CASES NOW UNDER CONSIDERATION.

I am not here to dispute the correctness of the rule laid down in *Johnson v. Towsley* and kindred cases. That which I complain of is not that those cases are not decided correctly, but that the *reason* for the rule that fixed and created that line of decision, and which has always marked the difference between the acts of the register and receiver, and boards of commissioners, clothed with the powers enumerated by the act of 1887, and kindred acts, inhibits the application of the rule in those cases, to the cases at bar. This court, until the decision announced in the Rector-Gibbon case, from its organization down to that time, had drawn a broad distinction between the powers and the conclusiveness of the decisions of these tribunals, that is stricken down in the Rector-Gibbon case. It is the striking down of this *distinction* of which I complain.

In *Garland v. Wynn, 20 How., 8,* the court, in stating the difference between the conclusiveness of these tribunals, said:

"The general rule is that where several parties set up conflicting claims to property, with which a special tribunal may deal, *as between one party and the government, regardless of the rights of others*, the latter may come into the ordinary courts of justice and litigate the conflicting claims. Such was the case of *Comyges v. Vassee, 1 Pet., 212*, and the case before us belongs to the same class of *ex parte* proceedings."

The court characterizes the proceedings before the register and receiver as being an *ex parte* proceeding, and in stating *why* it was, says that it was a tribunal that could deal with the property, *as between one party and the government, regardless of the rights of others.*

The court further say that the case of *Comyges v. Vassee*, was of the same character. Now let me see *why* it was, and *what* it is, that marks and fixes the boundary line between the two classes of cases. The commissioners were authorized to award against the United States the amount of certain claims for damages. Vassee was an underwriter and had paid certain losses and was entitled to be reimbursed. The act creating the commission did not provide for any contest as to the *ownership of the claim.* The commissioners awarded the amount as due from the United States to Vassee. Vassee had gone into bankruptcy and his assignees claimed the award, and the contention made was, that it having been awarded to Vassee, that this was an adjudication by the commissioners, that it did not belong to the assignees in bankruptcy, and that the finding of the board was final and conclusive.

The court held that the finding by the commissioners, as to the *amount due under the claim* was final and conclusive, but that this did not preclude an inquiry into who was entitled to it, and in stating *why it was not final*, on the question of *ownership*, this court said:

"It does not appear from the statement of facts, who were the persons who presented or litigated the claim before the board of commissioners. * * * *They* (the commissioners) *had no authority to compel parties, asserting conflicting interests, to appear and litigate before them, or summon witnesses to establish or repel such interests, and under such circumstances it cannot be presumed that it was the intention of Congress to clothe them with an authority so summary and conclusive, with means so little adapted to the attainment of the ends of substantial justice.*"

What is said in that case is what is said in *Minnesota v. Bachelder, 1 Wall., 111*, that is: "That no notice is provided for *or contemplated*, by the pre-emption laws, *as to parties holding adverse interests*, nor do they comtemplate *the litigation of any right* between the *applicant* for a pre-emption claim, *with a third party*. The question, as contemplated, is between the *settler* and the *government*, and if a compliance with the conditions is shown, to the satisfaction of he officers, the patent certificate is issued."

These cases state the reason for the rule, which is, that they are not clothed with full power to compel the *appearance* of the parties in interest or to summon witnessess to make the necessary inquiry into the facts, upon which final adjudications should be made.

The act of 1877, *compelled* every one who desired to be adjudicated the right to purchase a lot, *to submit their claims to the commission within six months after its organization and failing in this, their claims could not be considered.* It clothed the commissioners with power, "to compel the attendance of witnesses and the production of papers, touching the occupancy or improvements of, or on said lands, or any other matter in any wise belonging or appertaining either to the said lands or the improvements thereon * * * to hear any and all proof offered by such claimants and occupants, *and the United States,* in respect to said lands and in respect to the improvements thereon; *and to finally determine* the right of *each* claimant or occupant to purchase the same," and authorizes the appointment of a clerk, and places the United States marshal of the district at their disposal to serve and execute the process issued.

It was clothed with power equal to that possessed by any court of general jurisdiction in the land, and its means were ample and complete to making a final adjudication. To confound such a tribunal with that which the courts say is an *ex parte* proceeding, or to assimilate it to an *ex parte* proceeding, is to forget the rule that distinguishes one of these tribunals from the other. To say that the adjudications of such a tribunal were only intended to conclude the *United States,* and not the claimants, is to ignore that rule which declares the government is not concluded *unless expressly mentioned,* and in its place substitute another which binds it *unless specially excepted.*

The act of 1877 not only required but compelled a litigation over the *thing* to be *awarded* by the commissioners. The thing to be awarded was a *lot.* The question in each case was, shall the lot be awarded to the *government* or the *claimants,* be they few or many? It was not an adjudication, as between *one* party and the *government,* but between the *government* and *all* persons who, under the act, would have the right to prefer a claim to the thing awarded.

There is another reason why the rule found in Johnson v. Towsley and kindred cases can have no application to the cases at bar. In all those cases the court was dealing with a *matured right.* The complaining party said that Congress, by solemn enactment, promised him if he would comply with the requirements of the act he should have the preference right to purchase the land on which he had resided and made his improvements. This court has said, on more occasions than one, that if the pre-emptor complies with the act, that out of this compliance a *vested right* to have the land arises as against every one but the United States. In those cases the citizen *performed acts, and expended labor, and confined himself to one*

locality, in order to acquire a privilege, with the hope and expectation of getting the land which had been watered by the sweat of his brow. In the cases at bar the claim is not founded on any such consideration. Until the act of 1877 was passed neither the appellees or the appellants had a *right* of any kind. The act does not impose on them the *performance of any act* or the *contribution of any labor*, save such as follows from appearing before the commissioners and preferring a claim. All that any of them had to do was to appear before the commission and say: "I made an improvement on this particular lot prior to April 24, 1876, and have not sold the same to any one else." When he made proof of that fact he was entitled, *not to purchase the lot*, but the right *to be adjudged the right to purchase it*, but no right came into existence *until it had been so adjudged*. The title to land claimed under a homestead and pre-emption act was never made to depend upon *the adjudication of the register and receiver*. They were dealing, in pre-emption cases, with lands that *were subject to sale and within the control of the land department*. The commissioners, under the act of 1877, were dealing with lands that *were not subject to sale*, and that Congress *was trying to prepare for sale*.

THE NECESSITY WHICH REQUIRED THE CREATION OF A BOARD WHOSE DECISIONS SHOULD BE FINAL.

That which necessitated the appointment of these boards of commissioners from 1801 to as late as 1829, necessitated the appointment of a precisely similar board for the disposition of the Hot Springs reservation. When the United States acquired the Northwestern Territory, and that under the Louisiana purchase and Florida, it found people scattered all over it, some claiming under grants or permission from the British, and others from France and Spain, and some, without any claim at all. To this last named class it gave what was called a pre-emption, but it was founded on *past* as contradistinguished from future occupancy, improvement and cultivation. Congress desired to prepare the public domain for sale, but before doing so, wanted to *sever* and designate the exact location of that which was claimed by the classes alluded to without clouding their rights or possibility of title. To this end it created these boards of commissioners, and required all persons claiming title or preferences to come before the board and present their claims, just as is done in the act of 1877, within a given time, or they should be thereafter barred.

Congress found the Hot Spring reservation in the same condition it found the territory I have named, covered over with people and houses. It chose to give a preference, in the right to purchase, to persons who in the past had made improvements, prior to April 24, 1876, to purchase the land on which their respective improvements were situate. It knew there would arise questions, not about *the*

possession of the land, for it was in possession with its receiver; but about *the improvements*; when they were put there and *to whom they belonged*. It, therefore, created a tribunal clothed with power to finally determine, *not a right of possession of the land*; not *the title to the land*, or who first placed foot on it, but as to who had a right to the *improvements* on the reservation as they stood on the 24th day of April, 1876. Congress might have adopted a better plan, possibly, than that found in the act of 1877. With that we have nothing to do. It is possible, if some of us had been in Congress we would have given the preference right to purchase to other parties, than it is given to by the act of 1877. With that we have nothing to do. Congress had a right to give, and it has been given. It is for us to see that the persons to whom it *was* given *shall receive it*. There, our duty ends.

An examination of the legislation under which these decisions were made will disclose the fact that boards of commissioners were resorted to and created whenever it was desired to have a speedy settlement of the rights or equities of that which the government had bestowed. In all of them a statute of limitation, as in the act of 1877, was set in motion the moment the commission was organized. From the date of their organization, they were an *active*, as contradistinguished from a *passive* tribunal. The register and receiver constitute a passive, as contradistinguished from an active tribunal. The one comes into being clothed with the power to hear and determine, and with jurisdiction of the subject matter over the thing to be adjudicated, and proceeds with its adjudications irrespective of whether its adjudication is asked. It was created to determine a specific thing, independent of the conduct of persons who had the privilege of becoming parties to the same. If they came before it within the time fixed by the act they had a right to be heard. If they did not come in, the law and the commissioners proceeded to adjudicate without them. The register and receiver possess no such powers and can only hear and determine in cases where their decision is invoked.

This court in *Grisar v. McDowell, 6 Wall., 379*, and in *Trenouth v. United States, 100 U. S., 255*, in speaking of the power of Congress to create a board of commissioners, and the powers with which such boards might be lawfully invested, said:

"It may act by legislation directly upon the claims preferred, or it may provide *a special board for their determination* (of claims) or it may require submission to the ordinary tribunals. It may declare the action of the special board *final*; it may make it subject to appeal; it may require the appeal to go through one or more courts, or it may arrest the action of the board or courts at any stage."

Of what use are all these extraordinary powers, if they *are not final* when Congress declares they shall be? In the act of 1877 the commissioners were clothed with "power to compel the attendance of witnesses and the production of papers touching the occu-

pancy or improvements of, or on said lands; to hear all proof offered by such claimants and occupants, and the United States, in respect to said lands, and in respect to said improvement, and *to finallly determine* the right of each claimant or occupant to purchase the same." No provision was made for an appeal, and Congress declared the action of the board *should be final*, yet the court says it is not, although it says that Congress has the power to make it so, and although Congress has declared in express words that it shall be. Declaring that it should be final ought to make it so.

THE SECRETARY OF INTERIOR, THE HOUSE COMMITTEE ON PUBLIC LANDS AND MANY OTHERS SAID WAS FINAL.

A great many people thought Congress had made it final. The Secretary of the Interior, in his letter of January 5, 1880, in transmitting to each House of Congress a copy of the report of the commissioners, with the accompanying papers, says:

"Under existing law, no appeal from the decision of the commissioners can be entertained by the department, the act of March 3, 1877, having clothed the commissioners with authority to *finally determine* the right of each claimant or occupant at Hot Springs to purchase the land claimed or occupied by them."

Mr. Dunn from the House Committee on Public Lands, in the report accompanying House Bill No. 4244 which provided that dissatisfied claimants might proceed, as in equity, in the District Court for the Eastern District of Arkansas (Rep. No. 179, Forty-sixth Congress, 2d sess.), says:

"The Congress of the United States, for this reason (a desire to settle the titles speedily) provided that the awards of the right of entry by the commissioners *should be final.*"

Senator Edmunds said: "In 1877 Congress passed an act which, just as the committee speak of this one, was designed to make a finality of the Hot Springs business. By the terms of that act *it was made a finality*, and Congress had nothing left to do about it." (Cong. Rec., 2d sess. Forty-sixth Congress, March 18, 1880.)

Senator Davis, formerly of this court, was asked by Senator Conkling whether, after the Senate struck out of House Bill No. 4244 all provisions for review, whether persons feeling themselves aggrieved would have any remedy, to which Senator Davis replied: "*None at all. It receives the adjudication of the board as final.*"

The men who prepared the act of 1877, for it came from the Committee on Public Lands in the Senate, were familiar with the rule laid down in *Johnson v Towsley, 13 Wall., 72*, and kindred cases. While they were familiar with the rule in those cases, they were also familiar with the rule of decision in the cases to which I have called attention, and many others of a like character. It was because they were familiar with the rule of decision in both classes of cases, they provided for the creation of a tribunal which this court,

for more than a quarter of a century, had declared belonged to the political department of the government, and whose decisions were not subject to review by the courts. An examination of the legislation to which I have called attention, shows that the language employed in the act of 1877, is taken from the acts having birth from 1801 to 1829. The last named acts had, so far as the powers of the commissioners are concerned, been settled by this court, and it was supposed, for all time to come. Under this state of fact, the presumption is irresistible, to my mind, that Congress intended to create a board of commissioners whose adjudications should be final.

In the light of the legislation and the decisions to which I have called attention, I confidently appeal to them as furnishing a rule for the correct interpretation of the act of 1877, and that its findings are final and conclusive, and exempt from review by the courts. They constitute a long and unbroken line of decisions and a departure from the rule therein stated, is the announcement of the proposition that the *courts* and not *Congress* are clothed with the final disposition of the lands of the United States.

CONGRESS, DURING THE PENDENCY OF THE ACT OF 1877, REFUSED ABSOLUTELY TO ALLOW THE COURTS TO REVIEW THE AWARDS OF THE COMMISSION, AND AFTER THE AWARDS WERE MADE REFUSED BY A DIRECT VOTE, TO ALLOW THE COURTS TO REVIEW.

It will be shown that the Senate was asked to incorporate in the act of 1877, a provision, by way of amendment, *to permit the courts to review the adjudications of the commissioners*, and that it *voted the proposition down.*

It will be further shown that *after* the awards had been made by the commissioners, *and laid before both houses of Congress*, by the Secretary of the Interior, and the attention of Congress *called to charges of fraud*, in connection with the awards, that Congress *refused to allow the awards to be opened or reviewed.* It will be further shown that *after* the awards, two bills were pending before Congress, one of which passed the House of Representatives, *to give the district court at Little Rock jurisdiction to review the awards of the commission*, and that it was *defeated in the Senate.*

It will be further shown that the Senate Committee on Public Lands prepared a substitute for the House bill, defeated by the Senate, by which it was proposed to confer jurisdiction *on the Court of Claims to review the awards of the commission as* upon *certiorari, and that the bill was defeated.*

All these things tend to show, that Congress intended the adjudications of the commissioners under the act of 1877, to be final and conclusive, not alone on the land department, *but on all mankind.*

These matters throw light on the question of legislative intent and were not called to the attention of the court in the Rector-Gibbon case, and if they had been, it may well be doubted whether the court would have declared:

"The provision of the act that the commissioners *shall finally determine the right of each claimant or occupant*, to purchase the land, does not necessarily withdraw that determination *from the consideration of the court.* It is final, *so far as the land department is concerned.*"

Senator Alcorn, when the act of 1877 was pending in the Senate, offered an amendment to the fifth section, which, if it had been adopted, would have made the act mean what the court now says it means. It was offered as an amendment, to be added to the fifth section. and if it had been adopted the section would read:

"That it shall be the duty of said commissioners * * * to hear any and all proof offered by such claimants and occupantr, and the United States, in respect to said lands and in respect to the improvements thereon; and to finally determine the right of each claimant or occupant to purchase the same or any portion thereof, at the appraised value, which shall be fixed by said commissioners; *Provided, however,* That such claimants and occupants shall file their claims, under the provisions of this act, before said commissioners within six calendar months after the first sitting of the board of commissioners, or their claims shall be forever barred; and no claim shall be considered which has accrued since the 24th of April, 1876; *Provided further, That the word 'claimant,' used in this act shall be construed to mean a party holding or occupying ground on such reservation, under color of title, against the United States previous to the decision of the Hot Springs case by the Supreme Court of the United States, on the 24th of April, 1876; and the word 'occupant' used in this act, shall be construed to mean a party holding or occupying ground on such reservation without any color of title; and in case of any conflicting claims or rights growing out of them, between claimants and occupants, they are remitted to the local courts having jurisdiction over the county in which such reservation is situate, for settlement by and under such procedure as is known and recognized in such courts.*"

That which constitutes the Alcorn amendment is placed in italics. If this amendment had prevailed, and Congress had made it a part of the act, it would bear the construction now placed on it by the court. But Congress did not adopt it, *and out of its refusal comes the negation that it did not intend any court to supervise or review the adjudications of the commissioners.* It was plain that if such an amendment was adopted that the expenses of sending the commission there was that much money wasted in the distribution of a gratuity, and was entailing on the persons to whom awards were

made, never-ending and expensive litigation, and with no assurance that the courts were any more capable of judging correctly than the commissioners.

Senator Alcorn, in speaking of the object of his amendment, says: "It will be observed that the commissioners appointed under this bill have *plenary powers. There is no court that overlooks their decision.*"

His object, as the language of the proposed amendment shows, was to provide a mode by which the awards *could be reviewed and supervised by the courts.* Nineteen Senators voted in favor of allowing the courts to adjudicate upon the findings of the commission in cases where the adjudications of the commissioners were not satisfactory, but twenty-two voted against it, and the power to review the awards was denied. If there is anything in that which the courts say about following the intent of the Legislature, unless all that is a fraud and a delusion, this case is at an end, and the court was in error when it said the act of 1877 was not intended to withdraw the adjudication of the commissioners from the consideration of the courts, and that the conclusiveness of the adjudication must be limited to the land department.

It is due to the court to say that its attention was not called to this matter in the Rector-Gibbon case, and attention is not called to it now with a view of affecting that case, but to prevent my clients from being deprived of their property by the application of a rule found in that case, which was improvidently adopted, in the face of a direct and positive vote declaring that no such power should be exercised by the courts.

CONGRESS, AFTER THE AWARDS WERE MADE, AGAIN REFUSES TO ALLOW THE COURTS TO INTERFERE.

On the fifth of January, 1880, the Secretary transmitted to the presiding officers of each house of Congress the following letter:

"I have the honor to transmit herewith a copy of the final report of the Hot Springs commissioners, together with schedules showing the names of the parties in whose favor awards have been made, number and valuation of lots, etc., and also a copy of a communication filed with the commissioners on the 10th of December, 1879, and a letter from the chairman transmitting the same.

"The communication above referred to contains certain charges against the chief clerk of the commission, and questions the fairness of the awards made in several cases.

"As the department has not the power to compel the attendance of witnesses, or the production of papers, nor the means at its disposal to conduct an investigation into the charges made, I have deemed it my duty to lay the matter before your honorable body for such action as may be judged advisable.

"Under existing law no appeal from the decision of the commis-

sion can be entertained by the Department, the act of 1887 having clothed the commissioners with authority *to finally determine the right of each claimant or occupant at Hot Spring to purchase the land claimed or occupied by them.*"

On the reception of this communication both houses passed a resolution suspending all proceedings under the act of 1877, for sixty days. (U. S. Stat., vol. 21, p. 299.)

On the 10th of February, 1880, the House passed a bill known as 4244. The third section of the bill provides *that a revision of the awards of the commission may be had in equity*, on account of *fraud, gross error* or *mistake*, and that any person feeling themselves aggrieved, by any award, may file a bill in equity in the *District Court of the United States for the Eastern District of Arkansas.* (A copy of this bill will be found in the appendix marked "A.") Accompanying this bill was a report from the House Committee on Public Lands recommending the passage of the bill and the reasons therefor. (A copy of the report will be found in the Appendix to the brief marked "B.")

See House Jour., Feb. 5, 1880, and Feb. 10, 1880, pp. 451-2-3.

The House bill went to the Senate and was referred to the Senate Committee on Public Lands. On the 27th of February, 1880, the Senate Committee reported back a *substitute for the House bill*, and struck *out all after the enacting clause and inserted the Senate substitute.* The change made by the Senate substitute, material to this question, was *that it struck out the District Court of the United States for the Eastern District of Arkansas*, and changed the remedy from that *of equity* and made it one of *certiorari*, and placed the jurisdiction *in the Court of Claims.* (A copy of the Senate bill will be found in the appendix to the brief marked "C.")

The bill as thus amended was considered in the Senate on the 18th and 19th of March, 1880, and passed. (Senate Jour., p. 352), but before passing, the residue of the bill, the Senate struck out the provision of the same *authorizing a review of the awards by the courts.* The Senate bill was accompanied with a report and a copy of the same will be found in the appendix to the brief marked "D."

As soon as the bill, which contemplated conferring jurisdiction *on the Court of Claims* was read in the Senate, and the report accompanying it, Senator Edmunds said:

"I should like to have this matter explained a little. I do not see, quite as clearly as the committee, *the fitness of this legislation.* In 1877 Congress passed an act, which, just as the committee speak of this one, *was designed to make a finality of the Hot Springs business. By the terms of that act it was made a finality, and Congress had nothing left to do about it.* * * * All that the act of 1877 required has been done. The law having finally exerted itself and

performed its functions through these commissioners, it is proposed afterward *to have a new trial*, for everybody that chooses to seek a new trial, *and a review of the action of the commissioners*, by the Court of Claims, on the theory that *they* will satisfy everybody, and *then it will be final.* Why should it be any more *final* then, than it is *now?* Is it right, as a matter of principle, for the Congress of the United States, in disposing of this property of its own, having *once made final provision*, for deciding everything that *Congress thought it fit to have decided about*, and that decision having been made; is it right, I ask, on the complaint of anybody, to reopen the thing; to provide further trials in favor of dissatisfied claimants, *and particularly when those claimants are not resting upon the ground of an absolute right, but are only resting upon the generosity of the government which was exerted in the passage of the act of 1877, giving them the privilege of purchasing the land at its value, to the exclusion of others?*"

Cong. Rec., 2d sess., 46 Cong., March 18 and 19, 1880.

Senator Davis, once a member of this court, as were many others, was impressed with the statement made by Senator Edmunds, and, after examining the matter over one night, moved to strike out eight sections of the bill, and as a reason for doing so, said:

"The first section simply authorizes these proceedings to be transmitted to the officers at Little Rock. That is being done by the Secretary of the Interior now. The other sections (seven) I have moved to strike out, really *authorize a new trial of the adjudications of the Hot Springs commission, in the Court of Claims.*"

Senator Conkling asked Senator Davis this question: "Tell me whether the substitute, as now amended, *gives any recourse to those who complain of hardship under past adjudication?*"

Senator Davis: "*None at all. It receives the adjudication as final.*"

Cong. Rec., 2d sess. 46th Cong., March 19, 1880.

We thus find, that *before* the act of 1877, became a law, Congress absolutely *refused to allow the courts to review the awards of the commissioners.* We find that *after* the awards were made, and fraud charged in making them, Congress was again asked to grant the courts the right to review the awards, *and that it again refused to grant such power.*

If this court is disposed to follow the intent of Congress, as shown by its records and proceedings, that the adjudications of the commissioners under the act of 1877 were to be final, that fact has been established beyond all controversy.

If this is not enough, I will show you later on, that Congress declared by solemn enactment, that the persons in whose favor the commissioners had adjudicated, should have the sole right to pur-

chase the lots in controversy, *thus confirming and granting to the appellants the lots in question.*

IF THE INTENT OF CONGRESS BE SOUGHT FOR IN ITS RECORD AND PROCEEDINGS, THE DECREE SHOULD BE REVERSED.

In *United States v. Fisher, 2 Cranch, 358*, this court, in laying down a rule for the construction of a statute, said: "Where the intent is plain, nothing is left to construction. Where the mind *labors* to discover the intention of the Legislature, *it seizes upon everything from which aid can be derived.*"

This rule was invoked and followed in the case of *Blake v. National Bank, 23 Wall., 307*, and it will be seen from an examination of that case that this court on its own motion, for the purpose of arriving at the true construction of an act of Congress, examined—

1st. The Congressional Globe.
2d. The House Journal.
3d. The Senate Journal.
4th. The appointment of a committee of conference.
5th. The report of that committee.
6th. Took note of the various amendments proposed and rejected.

And after referring to and commenting upon these various things and the inferences to be drawn therefrom, this court said:

"Under these circumstances we are compelled to ascertain the legislative intention by a recurrence to the mode in which the embarrassing words were introduced, as shown by the journals, and records, and giving such construction to the statute as we believe will carry out the intention of Congress."

Let it be conceded that we are confronted, as Chief Justice Marshall said with a case "where the mind has to labor to discover the intention of the Legislature." The mind of the court in the Rector-Gibbon case did labor, and it sought for matter outside of the statute to ascertain the legislative intent. It did not pursue the course adopted in the case of *Blake v. National Bank, 23 Wall., 307*, for the court's attention was not called, directly, to the fact that the result reached by the court was *in direct antagonism with a well expressed intent of Congress.* I do not seek to reflect upon, or in any manner disparage the ability of the counsel who appeared for Gibbon in the Rector-Gibbon case, but, divesting myself of all egotism, I do not think that case was as thoroughly presented as it might have been.

I have said the mind of the court labored to find the true construction to be placed on the words "claimants" and "occupants," and sought for it not inside but outside of the statute. This court knew of the long and protracted litigation between Hale, Rector and Gaines, before the passage of the act giving the Court of Claims jurisdiction, and of what had taken place in that court, and were

[AS THE COURT CONSTRUES IT.]

Sec. 5. That it shall be the duty of said commissioners to show by metes and bounds, on the map herein provided for, the parcels or tracts of land claimed by reason of improvements made thereon or occupied by persons [who claimed possession under an assertion of title or a right of pre-emption by reason of their location or settlement] by each and every claimant and occupant on said reservation; to hear any and all proof offered by such claimants and occupants [under an assertion of title or right of pre-emption] and the United States; and to finally determine the right of each claimant and occupant [under an assertion of title or right of pre-emption] to purchase the same, or any part thereof, at the appraised value, which shall be fixed by said commissioners.

[UNDER THE ALCORN AMENDMENT.]

Sec. 5. That it shall be the duty of said commissioners to show by metes and bounds, on the map herein provided for, the parcels or tracts of land claimed by reason of improvements made thereon, or occupied by persons claiming under color of title against the United States, by each and every claimant, and by each occupant without color of title, on said reservation, to hear any and all proof offered by such claimants under color of title, and occupants without color of title, and the United States; and to finally determine the right of each claimant under color of title or occupant without color of title, to purchase the same, or any part thereof, at the appraised value, which shall be fixed by said commissioners.

It will be seen that Senator Alcorn attempted to do *by statutory construction*, or rather by changing the terms of the grant, what *has been done by judicial*. The proposed amendment was *defeated* and the grounds on which it was done was, that *it would bestow the privileges granted by the act* then under consideration, *upon a class who were not intended to be so favored*. I cannot bring myself to believe that this court, if its attention had been aptly called to the fact that Congress, after having been requested to construe the word "claimant *as one having color of title or rights under a pre-emption act*," voted *that no such construction should be put on the word*, would have construed the word to mean what Congress *by a plain and unmistakable vote said it did not mean*. Entertaining this belief, is that which gives me confidence you will with patience hear me, and correct an error, if you shall find one has been inadvertently fallen into. I am not arguing these cases in any captious spirit, or to unsettle that which has been settled, but to arrive at a proper construction of the act of 1877, which was intended to give to my clients that which, by a misconception of the intention of Congress, has been adjudged to the appellee.

Senator Oglesby, the chairman of the Senate Committee on Public Lands, during the pendency of the Alcorn amendment, said: "If Congress chooses to go back to the three different interests at stake, represented by the three different claimants, and say which of those three original claimants shall have this land, we can do so. But *the Committee on Public Lands*, after giving the best consideration they could, thought that as the Court of Claims and the Supreme Court of the United States, with all the facts before them, with able counsel representing the claimants, had decided that the title to these three or four sections of land was in the United States and in neither of these persons, and thereby made it public domain again, thought they would take what seemed to be a more *liberal* view than that. * * * So *the Committee on Public Lands* concluded

that they would look on this public domain as they would at public domain west of the 100dth meridian, or east of it. We found it occupied by men, women and children, by landlords and merchants, by traders, etc. So *the Committee on Public Lands* thought they would take that view of the matter which would meet the conditions of the people living there, *rather than the rights of the old claimants.* * * * We found that if we said these commissioners should divide this land out between the claimants and the occupants we should be troubled, and so would the commissioners, with what was the signification and legal meaning of 'claimants.' The *committee decided* that by the word 'claimants' they did not mean one of the *old three claimants*; that they did not mean a claimant '*under color of title*' *existing prior to the decision of the Supreme Court;* but they meant by 'claimant' one who had made *improvements* on twenty feet, forty feet, or one hundred feet, or an acre, or five acres of the ground, who put the improvements upon it, a hotel or a boarding house, or a residence, or a cottage, but did not live in it, possibly absent from the springs, or living in other buildings on the reservation; but as such persons had built the house and made the improvements, we tried to use apt language to describe this sort of claimant we would include in this law As distinguished from that 'claimant,' and as a separate person from him, we define an 'occupant.' We make two classes, the 'occupants' and the 'claimants' Now, the occupant may be the owner of the house and the improvement. Bear that in mind. But a man may not be the owner of the improvement and yet be an occupant. * * * If you go behind our meaning of the word 'claimant' and put in 'claimant under color of title,' the Senate will see that you go back at once to a class of men who claim to have owned the land *prior to the decision of the Supreme Court.* As *the Committee on Public Lands* wished to *steer clear of those claimants,* and to recognize a subsequent *and altogether different class from those,* they used the language in the fifth section which I will now read: 'That it shall be the duty of said commissioners to show by metes and bounds, on the map herein provided for, the parcels or tracts of land claimed *by reason of improvements made thereon.*' Is not that plain enough to go by?"

Cong. Rec., 2d sess., 44 Cong., vol. 5, pp. 1871–2.

Bear in mind that the language of Senator Oglesby is not that of a partisan in debate, who was friendly to the bill, that he is not expressing his *individual* views, but the determination of the *committee* that had prepared the bill, as a substitute for one that had been referred to them. Had these facts been brought to the attention of the court, in a proper manner, it cannot be possible this court would have placed the construction on the act that is found in the Rector-Gibbon case.

An examination of the records of the Senate show a curious state

of affairs. Senator Alcorn and those who voted with him, on the amendment proposed by him, evidently were of opinion that the act did not mean what it had been construed to mean, *or they would not have wanted to have amended it*, on the other hand those who opposed his amendment, *because it would make the act mean what the court now says it does, would not have voted for the bill at all.* The result is, that those who voted *against* the bill, *because it did not recognize the rights of the three old claimants*, get *what they wanted*, and those who passed the bill *to place all who were on the reservation prior to April 24, 1876, on the same level, find they have given the land to three old claimants.* It does look to me like *the legislative intent, ought to be sought after again, where this state of affairs are disclosed.*

Other Senators participated in the debate over the Alcorn amendment, and those who opposed it concurred in the construction of the act as announced by the chairman of the Committee on Public Lands. I do not give their remarks because it would only be cumulative of what was said by the chairman of the committee, and the expression of individual views of Senators.

The legislation is not *confined to the tract* (the southwest quarter of section 33) *over which the old claimants had litigated*, for more than the life of one generation, but extended to a tract *that was two miles square.* Now what was it the commissioners were to do? The third section of the act says they are to lay out the entire reservation, except that portion which is to be reserved, into lots, blocks, alleys, streets and avenues, and in doing this the lines shall correspond with the existing boundary lines of the occupants of said reservation, as near as may be consistent with the interests of the United States."

In this section no mention is made of claimants, but the *boundary lines* of the *occupants* are to be recognized and observed. The fifth section then declares: "That it shall be the duty of the commissioners, to show, by metes and bounds, on the map herein provided for, the tracts or parcels of land claimed (*not by reason of an assertion of title, or of a pre-emption, location or settlement*, but) by reason *of improvements made thereon* or occupied by each and every such claimant and occupant (not on the quarter section over which the old claimant had litigated, but) *on said reservation;* to hear any and all proof offered by such claimants and occupants, *and the United States*, in respect to said lands, and in respect (not *to an assertion of title, or of a pre-emption location or settlement* or occupancy thereunder, but) *to the improvements thereon;* and *to finally determine the right of each claimant or occupant to purchase the same*," *etc.*

The controversy was to be confined to "lands claimed by reason *of improvements made thereon*," and the parties to that controversy, in each and every case were *the United States*, and such other persons, be they few or many, as claimed the land, not under an asser-

tion of title or a right of pre-emption, but *by reason of improvements thereon.*

The sixth section provides: "That the commissioners shall have power to compel the attendance of witnesses and the production of papers touching (not *an assertion of title, or of a pre-emption location or settlement*, but) touching *the occupancy, or improvements of, or on said land*, or any other matter in anywise belonging or appertaining either to the said lands, or the *improvements thereon.*" The occupancy here referred to was, that of which the chairman of the Committee on Public Lands speaks, that is, whether he occupied as an owner or by permission of the owner.

These sections, directing the character of the testimony the commissioners are authorized to hear, and compel the production of, nowhere indicate to my mind, that Congress by this legislation, *intended to validate and resuscitate the New Madrid title of Rector, or the pretended pre-emption claims of Gaines and Hale.* If that had been the object of the act, there certainly was intelligence enough in that body to have employed language indicating such an intention. If Congress had intended to grant a *new equity* to the three old claimants, they would not have left the evidence of such an intent, to be drawn from a loose remark found in the opinion of the court, in disposing of the Hot Springs cases.

With the history of the passage of this act, let us examine it and see if it is in consonance with what the chairman of the Commistee on Public Lands said it was intended to mean, or if not from that standpoint, under that rule of construction that says, the meaning of a statute should be gathered from the words of the act itself, without resort to extraneous matter or circumstances.

That the act of 1877 granted a preference right to a certain class of persons to become the purchasers of certain portions of the Hot Springs reservation, and provided a tribunal to determine who should become the purchasers, goes without the saying. The opinion in the Rector-Gibbon case seems to have been prepared under the impression, and from the standpoint that the claim of Hale, Rector and Gaines covered the *entire* reservation, whereas, in truth and fact, the land they claimed constituted only one-sixteenth of the reservation. The language of the opinion is: "It was for their benefit the act was passed." This assertion certainly would not have been made if it was known to the court that seven-eighths of the claimants and occupants at Hot Springs, were on the land other than that claimed by Hale, Rector and Gaines.

The court say that the act was passed, "in order that they (the old claimants) should not entirely forfeit *their* claims from location or settlement, and *their* improvements, but should have, except as to the portions reserved, the right to purchase." The fact that there were five hundred and more people on the reservation, whose improvements were vastly superior to those of the old claimants, and not on land claimed by them; under the theory announced it seems,

was no part of the inducement that led to the passage of the act of 1877; that Congress saw these people and knew they had like improvements, but did not have them in its mind's eye when it passed the act, and did not intend to confer any privilege on them; that the injury the three old claimants might suffer, was paramount to these other interests, and the provisions of the act must be limited to the rights of three persons.

In repeating the language of the court in the Hot Springs cases, in *Rector v. Gibbon*, there is carried with it the idea that if the act of 1877 was not confined to the old claimants, it would not carry out *the suggestion of the court* in taking into consideration their supposed hardships. Congress was the sole judge of what privileges should be extended to either of them, or whether it would give them anything. But it is a mistake to suppose that such a construction was necessary to protect them. Wherever they made an improvement, except in the Rector-Gibbon case, they got the land on which it stood. It appears from the report of the commissioners that the land claimed by appellee, Gaines, was laid out into two hundred and sixteen lots, and that he and persons claiming under him were awarded the right to purchase one hundred and sixteen of them. The appraised value of the two hundred and sixteen lots was $62,106, and the value of those awarded the appellee was $33,250, which shows Gaines got more than half the lots, and that his half was the most valuable. Not content with this, Congress reduced the appraisement 60 per cent. thus making appellee an additional present of $19,950. (See Report of Secretary of Interior to Congress—appendix "E.")

If the appellee ever suffered any hardships, it will be seen that Congress and the commissioners have amply compensated him, when it is taken into consideration that Congress allowed him to collect rents from government land at the rate of $20,800 per annum for many years. (See Davies' Deposition in Term No. 309, p. 122.)

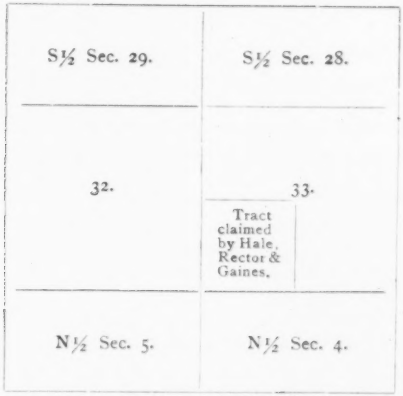
THE CONSTRUCTION PLACED ON THE ACT OF 1877 LIMITS THE OPERATION OF THE ACT TO ONE-SIXTEENTH OF THE RESERVATION, AND RENDERS IT INOPERATIVE AS TO THE OTHER FIFTEEN-SIXTEENTHS.

The whole frame-work of the act shows that Congress was legislating, not about the *quarter section* Hale, Rector and Gaines had been litigating about, or for the disposition of that particular tract, but for the purpose of paving the way to the disposition of the *entire* reservation, and giving a preference right to *all* who had made improvements. Le us examine the act in that view.

The first duty imposed on the commissioners after having properly organized is, by the third section of the act, declared to be as follows:

"That it shall be the duty of said commissioners, after examina-

tion of the topography of (not the quarter section that had been in litigation, but) *the reservation*, to lay out into convenient squares, blocks, lots, avenues, streets and alleys, the lines of which shall correspond *with the existing boundary lines* of occupants (not of the quarter section, but) of said reservation as near as may be consistent with the interests of the United States, the following described lands to wit:



Instead of inserting the description of the land constituting the reservation, a plat is submitted, so the eye will convey to the mind the size and shape of *that* with which the commissioners had to deal, and *what* it was the commissioners were to lay out. The *quantity* of land to be dealt with negatives the idea that the commissioners were to be confined and limited to hearing testimony about the improvements made *on the quarter section once claimed by Hale, Rector and Gaines.*

The third section is drawn from the standpoint that the entire reservation belonged to the government. It is true that it recognizes the reservation was occupied, and that these occupants had some sort of boundary lines as between themselves, and it is also true that these lines were to be regarded except when, in the opinion of the commissioners, their recognition would not be to the interests of the United States. While all these things are true, there is no attempt to discriminate in favor of those "who had made improvements, or claimed possession *under an assertion of title or a right of pre-emption by reason of their location or settlement.*" No such discrimination is made and no such discrimination was intended. If it had been the presumption is that Congress would have employed language to have expressed such an intent.

The fourth section provides that the commissioners are "to designate a tract of land, in one boundary, sufficient in extent to include, and which shall include all of the hot or warm springs, situate on

the lands aforesaid, to embrace, as near as may be, what is known as Hot Springs Mountain, etc."

The fifth section of the act declares: "That it shall be the duty of the said commissioners to show, by metes and bounds on the map herein provided for, the parcels or tracts of lands *claimed by reason of improvements made thereon*, or occupied by each and every claimant and occupant on said reservation; to hear any and all proof offered by such claimants and occupants, *and the United States*, in respect to said lands and in respect to *the improvements thereon*; and *to finally determine* the right of each claimant or occupant to purchase the same, or any portion thereof, at the appraised value, which shall be fixed by said commissioners."

There is nothing in the language of this section from which an inference can be drawn that the persons residing on one portion of the reservation were to have their rights determined by *another and different rule* than that which should be applied to occupants and claimants *on any other part of the reservation*. I do not understand it to be claimed that any such intent can be drawn from the *words of the act*, but that it is drawn from language found *in the opinion in the Hot Springs cases in the 93 U. S.*

The question then is: Do the words "claimants" and "occupants," as used in the fifth section of the act of 1877, carry with them, by implication, or otherwise, that they are to be confined or limited to "those who had made improvements, or claimed possession *under an assertion of title or a right of pre-emption, by reason of their location or settlement?*"

To the end that the eye may catch the difference between the fifth section, as it was *passed by Congress*, and as it is *now* interpreted, I place the statute as it is, and as construed, in parallel columns, to the end that the interpolation may be seen at a glance, and for the purpose of showing that the court in its effort to make the act apply to the old claimants, has *changed the terms of the grant:*

[AS CONGRESS MADE IT.]	[AS THE COURT CONSTRUED IT.]
SEC. 5. That it shall be the duty of said commissioners to show by metes and bounds, on the map herein provided for, the parcels or tracts of land claimed by reason of improvements made thereon or occupied	SEC. 5. That it shall be the duty of said commissioners to show by metes and bounds, on the map herein provided for, the parcels or tracts of lands claimed by reason of improvements made thereon or occupied [by persons who claimed possession under an assertion of title or a right of pre-emption by reason of their location or settlement]
by each and every claimant and occupant, on said reservation; to hear any and all proof offered by such claimants and occupants	by each and every claimant and occupant, on said reservation; to hear any and all proof offered by such claimants and occupants [under an assertion of title or a right of pre-emption]
and the United States; and to finally determine the right of each claimant or occupant	and the United States; and to finally determine the right of each claimant or occupant [under an assertion of title or a right of pre-emption]
to purchase the same, or any portion thereof, at the appraised value, which shall be fixed by said commissioners.	to purchase the same, or any portion thereof, at the appraised value, which shall be fixed by said commissioners.

I do not desire to expose myself or the court to unjust criticism, but candor compels me to say that the placing of these words in the act, *after it has been shown that Congress refused to allow them to be placed there*, has the appearance of judicial legislation; not only this, but by limiting the act to the old claimants, creates a rule of decision that cannot be applied to the claimants and occupants on other portions of the reservation.

Nine hundred and fifty different persons, as will be seen from the commissioners' report, filed claims before the commission to be awarded the right to purchase lots on which they claimed to have made improvements. If you interpolate into the fifth, or any other section of the act of 1877, the qualifying words, "those who made improvements or claimed possession *under an assertion of title or right of pre-emption*," you must let them stand as a fixed and definite part of the act, having the same force and effect as though they had been placed there by Congress. You cannot put these words into the act when you come to determine the rights of *three* of the claimants, and take them out when you come to ascertain the rights of the other *nine hundred and forty-seven.*

In *Ross v. Borland, 1 Peters, 666*, this court, in construing a statute (the act of March 3, 1803) granting a privilege to persons to purchase lands upon which they had resided and made improvements, said:

"The law was intended to confer a bounty on a numerous class of individuals, and in construing the ambiguous words of the section, it is the duty of the court to adopt that construction which will best effect the *liberal* intentions of the Legislature."

We claim this rule of construction should be applied to the act of 1877, instead of that which *limited* the bounty to three persons, when there were nearly nine hundred persons, by a liberal construction, that would have fallen within its terms, and who were equally meritorious to three persons to whom the bounty was adjudged by the circuit court.

I will not take a suppositious case, but that of Michael McDonald, who purchased from Frank Flynn (Term No. 379), to illustrate the effect the interpolation of the words "those who made improvements or claimed possession *under an assertion of title or a right of pre-emption*" would have in his case. Flynn in his petition to the commissioners states that the lot to which he asserts claim is in the northwest quarter of the northwest quarter of section four, township three south, range nineteen west. *It will be observed that this tract of land was one to which there never had been an assertion of title or a right of pre-emption claimed by either of the old claimants* or any one else. Flynn could not have proved, nor could any of the other eight hundred and fifty, who made claims to other portions of the reservation, than that claimed by Hale, Rector and Gaines, that any individual *had ever asserted title* or that *possession was held or improvement had been made under a pre-emption claim.*

The question now arises: "Should the claims of persons who could not show their improvements were made '*under an assertion of title, or a right of pre-emption*, by reason of location or settlement,' have been rejected?"

If that had been the ruling of the commissioners, then the act of 1877 could have no application to any other persons than Hale, Rector and Gaines, for they were the only persons on the reservation to whom that language could be applied, and the 1300 lots awarded by the commissioners on that part of the reservation other than the southwest quarter of section thirty-three, was a wholesale robbery of the government. I apprehend that such a construction of the act cannot be maintained. That Congress did not intend such a construction of the act to be indulged, is negatived by the fact that, with the awards of the commissioners before it, it passed the act of 1880, *authorizing this eight hundred excluded by the opinion from purchasing*, to purchase, as it did those in whose favor the commissioners had adjudicated in favor of, who had made improvements on the land formerly claimed by Hale, Rector and Gaines. This fact is pregnant with the idea that in the opinion of Congress the adjudications of the commissioners were not to be confined or limited to settling controversies between the three old claimants and their tenants. For this reason we insist that no rule of construction should be adopted that is not equally applicable to every portion of the reservation.

The act of 1877 is an entity. When Congress passed it, it was dealing "with a condition and not a theory." No words can be found in the act from which an inference can be drawn, that the claimants and occupants on one portion of the reservation were to have their rights determined by a different state of proof, or a different construction of the law, than was to be applied to the claimants and occupants on another portion. If one had to show "an assertion of title or a right of pre-emption" before he could be adjudged the right to purchase, then, all of them had to show it. If one of them could be exempted from making that proof, then, all of them were exempt.

The grant was to a class. It was intended to include all who made improvements prior to April 24, 1876. That class included nine hundred or a thousand people, but the construction found in *Rector v. Gibbon*, confines the act to three persons, and says they are the persons for whose benefit the act was passed. He who built a house or made an improvement on a lot carved out of the quarter section once claimed by Rector, Hale and the Belding heirs, where a house had never been built before, with his own money, and under a contract with the man he found in possession, but whom it was afterwards found had no title, with a contract reserving to himself the right of removal, is told that the improvement he made and which he yet owns, inures to the benefit of the Belding heirs, and the man who built his house ten feet from him, but over the line of this

quarter section, is awarded the right to purchase the lot on which he erected his improvements.

When one of them comes before the commissioners he is asked to establish by proof that at the time he made his improvements, he was claiming possession, under an assertion of title or a right of pre-emption, and failing in this, his claim is rejected. His neighbor, but ten feet away, comes before the commissioners, and is not asked to prove that he made his improvement under occupancy and an assertion of title or right of pre-emption, and is awarded the right to purchase the lot on which he made the improvements. The man whose claim was rejected, says: "Why do you award my neighbor the right to purchase his lot, and refuse me, and why do you require me to make a class of proof, that you do not require my neighbor to make?"

The commissioners tell him that he built his lot on one quarter section of the reservation, and that his neighbor built on another. The rejected claimant says: "What gives you the right to apply this rule to this quarter more than another?" The commissioners reply that it is true there is nothing in the act that points out this particular quarter section and requires the application of that rule to it, but that prior to the passage of the act of 1877, some persons had asserted title and others had preferred pre-emption claims to it, and that they think Congress possibly intended to give them greater rights than those who did not, and the rejected claimant goes away astonished at the intricacies of the law.

THE WORD "IMPROVEMENTS," AS FOUND IN THE ACT OF 1877, SHOULD BE CONSTRUED AND HELD TO HAVE THE MEANING ASSIGNED TO THAT WORD WHEN USED IN CONNECTION WITH TOWNS AND CITIES, AND NOT AS UNDERSTOOD IN THE PRE-EMPTION AND HOMESTEAD ACTS.

If an attempt was made to ascertain the legislative intent of the act of 1877, from the language of the act, or from any words found therein, the evidence of it is not to be found in the opinion. The case was made to turn, not on what is found *in the act*, but what was found *in a former opinion of the court.*

The fifth section requires the commissioners to show on a map, "the tracts or parcels of land claimed, by reason of improvements made thereon, and to hear proof in respect to said improvements and said land and to finally determine the right of each claimant or occupant to purchase the same."

It is plain from this language that the commissioners had to deal with two things: First, improvements, and second, lots or parcels of land. Bear in mind that the act of 1870, conferring jurisdiction on the Court of Claims provided that if the decision should be in favor of the United States, a receiver should be appointed who was to take possession of the property and rent it out until Congress should direct what disposition should be made of it. Bear in

mind also that at the time of the passage of the act of 1877, the receiver was in possession of every foot of land composing the reservation, and every house on it, collecting rents therefrom. I mention this to show that Congress was not only enacting a statute for the disposition of the *land* constituting the reservation, but was disposing *of the buildings and improvements* thereon.

Did Congress intend to vest the right to the improvement in one person, and the right to purchase the lot in another? or to take the improvements of one man away from him and give them to another? The thirteenth section of the act shows that the right to purchase the land, even after the award, depended on the improvement. It shows that the improvement was the principal thing, and that it drew after it, the right to purchase the land on which it stood. That section declares:

"That any claimant or occupant who does not desire to purchase the lands adjudicated to him, at the valuation fixed by said commissioners, shall have the right to remove any improvements made on said land, at his own cost, before the time fixed for the payment of said lands."

This section shows that Congress gave the buildings and improvements on the lot to some one, and authorized that person to take them off the lot, without paying anything of value to the government therefor. If the person in whose favor the commissioners had adjudicated, in relation to the ownership of the building or improvement, removed the same and did not desire to purchase the lot on which it was placed, under the twelfth section of the act, *reverted to the government*, and was to be sold as other government lots. If the appellants had elected to remove their improvements, and had elected not to take the lots which they had been awarded the right to purchase, this action could not have been maintained, for the lots would have gone to the United States.

As has been said, the gist of the right to purchase is founded on an *improvement*. What kind of an improvement? Where did the improvement *have to be made?* It is plain from the act that it had to be made on the land claimed. On what land? On a quarter section, an eighty acre tract or a lot?

The second section of the act declares: "It shall be the duty of the commissioners to lay out into convenient squares, blocks, lots, avenues, streets and alleys, the lines of which shall correspond with the existing boundary lines of occupants," the said reservation. The lots are to be laid out, not according to a *claim*, but according *to the lines of the occupants*. When the lots were thus laid out, the thing to which a claim could be preferred by a claimant was *in esse*, that is, it was susceptible of being found and contended for. It follows that the *improvement* had to be made *on that tract*. The subdivisions made under the laws, in the survey of the public domain, are obliterated by that which the third section of the act authorizes to be made. This carries with it the idea that the *im-*

provement which ordinarily attaches to the government surveys, under the *homestead and pre-emption acts*, are not of the class described in the act of 1877.

If the meaning of the word "improvements" can be ascertained from the context of the act, all the rules of construction require this to be done. The seventh section of the act declares "said commissioners shall have power to remove, or cause to be removed, all *buildings* or *obstructions*, when the same shall be necessary, also all obstructions to streets, alleys, etc." We know that a *building* is an *improvement*, and that when it comes to laying out streets and alleys where they should be, at a place like Hot Springs then was, might become an *obstruction*, and we know that fences, pavements and the like are sometimes called *improvements*.

The eighth section declares: "That the commissioners shall have the power to straighten streets, alleys, etc., and for that purpose may condemn all *buildings* they may find necessary."

The ninth section declares: "It shall be the duty of said commissioners to issue a certificate to each claimant, setting forth the amount of land the holder is entitled to purchase, * * * showing the character and valuation fixed *upon the improvements* of said tract and to issue a certificate or certificates to all persons *whose improvements are condemned*, showing the value of said *improvements*."

The improvements referred to by these sections are not such as fall within the homestead or pre-emption act. They relate to that character of improvement which is susceptible of being *removed*.

The thirteenth section of the act provides: "That any claimant or occupant who does not desire to purchase the lands adjudicated him or her, at the valuation fixed by said commissioners, shall have the right *to remove any improvements made on said land* at his or her own cost before the time fixed for the payment of said lands."

These sections show conclusively, that *a denuding of the ground of forest trees*, which is regarded as an *improvement* under the homestead and pre-emption acts, *is not the kind of improvement referred to in the act of 1877*.

There was some testimony before the commissioners, and there is a plat in the record showing where Gaines claims to have had improvements. The improvements shown on the map, and by the testimony, were made *before* 1865, and destroyed by Maj. Gen. Steele, *during the war, in 1865, and were never restored*. Gaines, in his bill, does not claim anything by virtue *of the destroyed improvements*. His claim, in these suits, is not founded on *them*. He does not claim that any of these destroyed improvements were on *any of the lots now in controversy*, nor does he claim he ever at any time erected any buildings on the lots in controversy. His claim is, that the improvements erected on the lots *by the appellants* became his, not by purchase or the right to purchase under a contract as in the Rector-Gibbon case, but that the lots *became his by forfeiture*.

WHAT IT WAS THAT INDUCED THE PASSAGE OF THE ACT OF 1877.

Public history is a matter of which courts sometimes take notice, and the condition of affairs that led to the enactment of a statute, is also at times referred to, but as the members of the court are not cognizant of all history it is sometimes necessary to prove it. We have done that in this case as a means of throwing light on the intent of Congress in passing the act of 1877.

On the 25th of April, 1875, the Court of Claims decided against the claims of Hale, Rector and Gaines, and the citizens resident at Hot Springs who had made improvements upon the reservation, some of them on the land claimed by Hale, Rector and Gaines, and some on other portions thereof, became anxious about what disposition the government would make of the ground on which their houses stood. Whatever was creditable in the way of improvements at Hot Springs up to that time was the result of the industry, enterprise and thrift, not of the old claimants, but of men who had erected buildings under leases from the old claimants, or on that portion of the reservation to which no claim of title ever had been asserted by either of them.

Those who had built under leases from the old claimants, and who had paid them enormous ground rents for years (after the court decided the old claimants were without title), felt no compunction of conscience, knowing the general policy of the government in relation to those who built towns on the public domain, in asking Congress to give them a priority as to the right to purchase the land or lot on which they had erected their houses. It is true this court had not, at that time, decided the Hot Springs cases, but they looked upon the opinion of the Court of Claims as embodying the law, and the reasoning therein found as unanswerable. That their judgment was correct is evidenced by the concurrence of this court.

During the Forty-fourth Congress the residents on the Hot Springs reservation, as appears from the Congressional Record, forwarded to Senator Dorsey a petition setting forth the condition of affairs existing there, and requesting Congress to pass an act giving them the right to purchase the ground on which they had erected their respective improvements. The petition was presented to the Senate by the Senator, and it was referred to the Committee on Public Lands. The petition is as follows:

"Petition of the actual and *bona fide* settlers on the so-called Hot Springs reservation, in the State of Arkansas: Whereas, The settlers on said reservation, to about four thousand in number, are prevented and delayed by the uncertain and precarious nature of their claims, from placing the substantial and permanent improvements thereon that the comfort of their families and the wants and necessities of the invalid public require and demand, whereby the growth and prosperity of this particular section is greatly retarded;

"We, the undersigned, therefore respectfully pray and ask your honorable body, at an early day of this session and term of Congress, to provide for the sale of all of said lands in said legal reservation upon an equitable basis, giving and reserving to *bona fide* settlers *the prior right and privilege of purchasing their substantially imprved premises, lots or enclosures* at a nominal or reasonable price and on deferred payments, etc."

This petition was signed by about 800 persons, and is now on file among the papers of the Senate Committee on Public Lands. It is not introduced here as testimony, but is referred to as a paper that was before Congress tending to show *the intent of Congress in passing the act of 1877*. (A copy of the same will be found in the Appendix marked ("F").

George M. French, in the case (Term No. 302, pp. 124-5) of George H. Smith against W. H. Gaines and wife, was asked:

Q. State if at any time you prepared a map of the Hot Springs reservation, or of any portion thereof; and if only a portion, state what portion, and how you came to do so, and at whose instance?

A. In the year 1875, I prepared a map of the entire Hot Springs reservation, as said reservation at that time existed. I done this at the direct request and instance of Stephen W. Dorsey, a member of the United States Senate for the State of Arkansas; and in payment for services in making said survey and map, the citizens and claimants on the reservation contributed the funds. A majority of those names of said citizens so contributing appear on this map. I have the map now and can produce it.

Q. After you completed the map state into whose hands it was placed, and what use was made of it—if you know?

A. After the map was made, I placed it in the hands of Stephen W. Dorsey, as Senator of the United States, to be used, as he then stated, by the land committee of the United States Senate, in formulating a bill or law, for the settlement of the questions of title by the claimants and squatters on said reservation. Of my own knowledge I cannot state that it was used before the Senate committee. I was informed by Senator Dorsey that it was in the possession of the Senate land committee. * * * The map showed the boundary lines of all claimants upon the reservation so far as those lines were designated, by fence lines or other monuments, upon the surface thereof; and the names of all such claimants were placed upon the map in numerical order, numbered from one on up, with the corresponding number to that set opposite of the respective names entered upon the claim as shown upon the map, as belonging to such claimants."

W. P. Walsh, ex-mayor of Hot Springs, testifies in the Smith case (Term No. 302, p. 127) as follows:

"In the year 1875, I made a contract with Geo. M. French and E. A Douglass, as surveyors and civil engineers, to make a survey and map of Hot Springs reservation, giving the topography of the

same; showing by metes and bounds, as nearly as may be, the land occupied on said reservation by squatters, claimants and occupants, who had made improvements on it.

"Q. State *if a petition* was placed before Congress and the map you refer to, or their land committee?

"A. The petition referred to, was signed by at least 800 persons, *not including the old claimants.* * * * The said petitioners asked Congress to pass some law granting them *severally* the right to purchase the lots or parcels of ground *upon which they had made improvements* and to settle the vexed question of title. The petition was sent to the Senate Committee on Public Lands at Washington, together with the map as compiled by French and Douglass. Senator Dorsey and other members of the Arkansas delegation, then in Congress, suggested the making of said map to show that there were more than *three persons who claimed property on the Hot Springs reservation,* and the map was paid for by the petitioners, in proportion to their claims. I know said petition reached Washington and was presented before the committees in both houses on public lands. I received letters in regard to it and talked with members of the Arkansas delegation, and was there myself at the request of the citizens and petitioners and occupants, and talked to the Senate Committee on Public Lands, also House committee and Secretary of the Interior, and remained there, as representative of said petitioners until the bill of March 3, 1877, passed and became a law."

The map, which is made a part of the French deposition (p. 24, Record, 302) shows the boundary lines of 480 different claimants, the shape of their claims, the exact location on the reservation, and that *over four hundred,* of the 480, were situate *outside of the land* to which *there had been assertion of title or a pre-emption claim.* Congress was dealing with a reservation where *seven-eighths* of the population resided on territory to which *there had never been an assertion of title or claim of pre-emption* and a construction is placed on the act that limits its operation to determining the rights of *three* persons, and to *one-sixteenth* of the territory specifically named in the act.

It may be asked what difference it makes to us what construction was put on the act as to lots on the other portion of the reservation? None, so far as the lots are concerned. What we object to is being mixed up with a privileged class, who have no more rights under the act of 1877, than we have, and who now insist that the feudal relations that once existed shall again be restored. The act of 1877, was Magna Charta, to all persons residing upon and owning improvements at Hot Springs. We became the peers of the nobles who had long ruled over us, and now claim our rights.

THE ACT OF JUNE 16, 1880.

I now come to a phase of this case that has never been presented to this court, and it is, that after the awards had been made by the commission, that Congress, by express enactment, granted the lots and land awarded by the commissioners, to the persons named in their report. The question that the court formerly dealt with was, whether the courts could correct a mistake of the commission, but the one presented now is, "Can this, or any other court, take these lots away from the persons to whom Congress has granted them?"

I shall not enter into an argument to show that Congress had absolute dominion over the lands of the United States and that it may grant them to whom it chooses. The question is not as to its power to grant, but is, has it made such a grant, and if so, can this, or any other court annul that grant and vest the title to the property, in another?

Under the ninth section of the act of 1877, it was made the duty of the commissioners "without delay to file in the office of the Secretary of the Interior, the map and survey herein provided for, with the boundary lines of each claim clearly marked thereon, and with each division and subdivision traced and numbered, accompanied by a schedule, showing the name of each claimant, and of each lot or parcel of land; the appraised value thereof, the numbers to correspond with such claim upon the map," etc.

That this section was complied with by the commissioners will appear from a letter of the Secretary of the Interior to the presiding officers of both houses of Congress.

SECRETARY OF INTERIOR INFORMS CONGRESS OF CHARGES OF FRAUD AND TRANSMITS FINAL REPORT OF COMMISSIONERS.

On the 5th of January, 1880, the Secretary of the Interior transmitted to each house of Congress a letter, and accompanying it was the final report of the Hot Springs commissioners, showing to whom the awards had been made, and a communication from John J. Sumpter and others, charging fraud in making some of the awards.

The Secretary of the Interior, in addressing the Speaker of the House and President of the Senate, says: "Sir, I have the honor to transmit herewith a copy of the final report of the Hot Springs commissioners, together with schedules showing the names of the parties in whose favor awards have been made, number and valuation of lots, etc., and also a copy of a communication filed with the commissioners on the 10th of December, 1879, and a letter from the chairman transmitting the same.

"The communication referred to above contains certain charges against the chief clerk of the commission, and questions the fairness of the awards made in several cases.

"As the department has not the power to compel the attend-

ance of witnesses, or the production of papers, nor the means at its disposal to conduct an investigation into the charges made, I have deemed it my duty to lay the matter before your honorable body for such action as may be judged advisable.

"Under existing law no appeal from the decision of the commission can be entertained by the department, the act of March 3, 1877, having clothed the commissioners with authority *to finally determine the right of each claimant or occupant* at Hot Springs to purchase the land claimed or occupied by them."

The Secretary then calls attention the fact that under the law he is required to forward certain maps and papers to land officers on or before the 14th of January, 1880. [A copy of this report of the Secretary of the Interior will be found in the appendix to this brief, marked "E."]

On the reception of this communication both houses of Congress passed a joint resolution extending the time for transmitting the papers for sixty days, and added these words: "And all further proceedings under said act (of 1877) be suspended until that time."

U. S. Stat., vol. 21, p. 299.

It will be seen, from the letter of John J. Sumpter and others, referred to by the Secretary of the Interior, and included as a part of his communication to Congress, that he was dissatisfied with the awards made by the commission.

The citizens of Hot Springs, to whom awards had been made, were anxious to have the appraisement fixed on the lots by the commissioners reduced. I refer to these facts as they show *how* and *why* it was Congress come to legislate at all on the subject of the disposition of the lots awarded by the commissioners, for the whole matter would have been disposed of under the act of 1877 *without further legislation.*

ACTION OF CITIZENS AT HOT SPRINGS.

On the 12th of January, 1880, the citizens of Hot Springs held a mass meeting and prepared a petition which was afterward presented to Congress asking that the valuation be reduced as fixed by the commissioners. Among other things contained in said petition is the following:

"Your memorialists show that for two years the said commissioners have been engaged in having the Hot Springs reservation surveyed and platted as a town site, and in investigating the claims of people who have made homes on said town site, by settlement, or fair purchase from those who made the original settlement and improvements; that said commissioners found over 900 *bona fide* occupants and claimants on the Hot Springs reservation, who, according to the spirit and letter of the laws passed by Congress for the relief of said claimants, were entitled to the homes thus

occupied and held by them; and the said commissioners, acting under authority of said acts of Congress, have issued certificates of title to said claimants, giving them the right to enter, at the United States land office, and hold the parcels of land thus awarded them. Your memorialists, the citizens of Hot Springs, desire here, now, and in this public manner, to express their heartfelt gratitude to Congress for the just, timely and liberal legislation that has resulted thus happily, and relieved them from distress that has for years afflicted them with the threatened loss of their homes. They believe, and take pleasure in saying, that in the matter of awarding titles, the action of the commissioners has, in the main, been discriminating and just, and that few, if any citizens, with colorable claims to their homes have failed, through the beneficent act of Congress, to receive the assurance of the government that they shall not be dispossessed. Your memorialists, with entire unanimity, certify to your honorable body that the citizens of Hot Springs *have accepted the decisions of the commissioners and the certificates based thereon in good faith, as final and conclusive as to all questions of title.* They intend *to uphold this settlement* as a happy ending of disastrous litigation. * * * But while applauding the wisdom *and generosity of Congress* in providing for the people of Hot Springs a way out of their troubles, and while approving the action of the commissioners *in the award of the titles, as securing substantial justice to all claimants*, your memorialists feel constrained to protest, in the most earnest manner, against the burdensome assessment which the commissioners have made on their lots, and which assessments the certificates issued to them require them to pay before patents for their lands can be issued."

The petitioners pray for the reduction of the appraisement. A copy of the petition, which is signed by 569 out of the 647 persons in whose favor awards were made, is attached to the brief and will be found in the appendix, marked "H."

This petition, as will be found on examination, is signed by 95 per cent. of the persons to whom awards were made. If the commissioners, however, had held, that only persons were entitled to awards who made improvements under an assertion of title or a right of pre-emption, the probabilities are the petition would not have been as laudatory of them as it is.

Of the 5th of February 1880, Mr. Dunn, from the Committee on Public Lands in the House, reported what became known as H. R. No. 4244, which is entitled, "A bill for the establishment of titles at Hot Springs and for other purposes," and makes provision for the reduction of the price to be paid for the lots, and also provides a remedy to dissatisfied claimants.

HOUSE BILL 4244, TO GIVE THE COURTS JURISDICTION.

The second section of the bill provides that after the adjudications provided for in the bill shall have been had, the person in

whose favor it is, shall have the right to purchase the lot, if it be less than one acre, for ten dollars, and if more than one acre and less than two, twenty dollars, and if more than two acres, the price shall be at the rate of ten dollars per acre. The third section provides that a revision may be had in equity of the adjudications of the commissioners, which may be questioned on account of fraud, gross error or mistake, and that any person feeling themselves aggrieved by an award may file a bill in equity in the District Court of the United States for the Eastern District of Arkansas, etc. The fourth section provides that the district court "shall proceed to try and determine the better right, as between the contestants, and to that end may admit exemplifications of the maps and plats of the land office at Little Rock and the testimony taken before the commissioners, * * * and any further testimony essential to the proper determination of such causes." It will be observed that while it was known, at the time this bill was prepared and while it was pending, the commissioners had not made their awards to persons "who made improvements, or claimed possession under an assertion of title, or right of pre-emption," that no authority is given to the court for having wrongfully construed the act of 1877. The fifth section makes the decision of the court final. The seventh section provides that those who made application for awards of land, not included in the permanent reservation should have the right to have their cases retried in the District Court of Arkansas. The seventh, eighth, ninth, tenth and eleventh sections of the bill now constitute the third, fourth, fifth, sixth and seventh sections of the act of 1880, except the proviso. A copy of this bill will be found in the appendix to the brief marked "A."

REPORT OF HOUSE COMMITTEE TO HOUSE BILL 4244.

This bill was accompanied with a report (No. 179, H. R., 46th Cong., 2d sess.), from the House Committee on Public Lands. Among other things, the report says: "The entire amount of land laid off into squares, blocks and lots as a town, is 1270 acres. Of this they have awarded to claimants, 699.81 acres. Upon the 699.81 acres so awarded to individuals they have fixed a valuation of near $250,000, to be paid by claimants to the government. * * * Memorials have also been received from the entire population, praying to be relieved from the onerous valuation placed on the land awarded to claimants. * * * The settlement of titles at Hot Springs at the earliest period practicable, is deemed of the utmost importance to the growth and prosperity of the town, in the building up of which, so as to furnish ample and needful accommodations to the visiting sick, every portion of the country is interested. *The Congress of the United States, for this reason, provided that the awards of the rights of entry by the commissioners should be final.* The Secretary of the Interior, in transmitting to Congress

the final report of the commissioners, transmits also a copy of a communication filed with the commissioners on the 10th of December, 1879, and letter from the chairman transmitting the same, and adds: 'The communication referred to above contains certain charges against the chief clerk of the commission, and questions the fairness of the awards made in several cases. As the department has not the power to compel the attendance of witnesses or the production of papers, nor the means at its disposal to conduct an investigation into the charges made, I have deemed it my duty to lay the matter before your honorable body for such action as may be judged advisable.' * * * Your committee unanimously recommend the passage of the substitute herewith submitted." A copy of this report will be found in the appendix to the brief marked "B."

SENATE SUBSTITUTE FOR HOUSE BILL 4244.

The bill passed the House on the 10th of February, 1880 and was sent to the Senate. The Senate Committee on Public Lands amended the House bill by striking out all after the enacting clause and presented a bill of fifteen sections. There is no substantial difference in the first sections of the two bills. The second section of the Senate bill provides that any person who was a claimant or occupant "of any tract or parcel of land forming a part of the land specified in section three of said act (1877), whose right to purchase such tract or parcel of land, or part of the same, has either been allowed or denied, by the said commissioners, where his ground of complaint shall be an adverse decision as to his right to purchase," may have the decision of the commissioners reviewed. The third section confers jurisdiction on the Court of Claims, and provides for a trial *de novo*, as upon *certiorari*. The fourth and fifth sections relate to matters of practice. The sixth section makes the decision of the Court of Claims final. The seventh section relates to costs. The eighth gives the right of review *in cases where the land was awarded to the government.* The ninth fixes the price of purchase to the persons in whose favor the Court of Claims shall adjudicate and in which no appeals have been prosecuted from the decision of the commissioners, to 50 per cent. of the appraised value. The tenth, eleventh, twelfth, thirteenth and fourteenth and fifteenth, are the same as sections two, three, four, five, six and seven of the act of 1880. A copy of the bill as amended in the Senate, will be found in the appendix to the brief marked "C."

REPORT OF SENATE COMMITTEE TO HOUSE BILL 4244.

The blll was accompanied with a report from the Senate Committee on Public Lands and is numbered 309, and among other things the committee say: "The litigation about the Hot Springs has

been long, tedious, vexatious and costly. Above all things it seemed to the committee important to end this completely, if possible. But few complaints have been made to the findings of the commissioners under the act of March 3, 1877, as to the possessory right to lots; and the committee have thought it proper, to give, in these cases, a review of the finding in some way that would not interfere at all with the disposal of the other lots. To this end they have provided for a *certiorari* in the Court of Claims, to the Interior Department to bring up the records and papers of the commissioners." A copy of this report will be found in the appendix to the brief marked "D."

DISCUSSION IN THE SENATE OVER HOUSE BILL 4244.

As soon as the bill which contemplated conferring jurisdiction on the Court of Claims and the report in support of it was read in the Senate, Senator Edmunds said:

"I should like to have this matter explained a little. I do not see quite as clearly as the committee (on public lands) the fitness of this legislation. In 1877 Congress passed an act which, just as the committee speaks of this one, *was designed to make a finality of the Hot Springs business.* By the terms of that act *it was made a finality*, and Congress had nothing left to do about it. * * * All that the act of 1877 required has been done. The law having finally exerted itself and performed its functions through these commissioners, it is proposed afterward to have a new trial for everybody that chooses to seek a new trial and a review of the action of the commissioners, by the Court of Claims, on the theory that *they* will satisfy everybody, and then it will be final. Why should it be any more final than it is *now?* Is it right, as a matter of principle, for the Congress of the United States, in disposing of property of its own, having *once made final provision* for deciding everything that *Congress* thought it fit *to have decided about it*, and that decision *having been made*, is it right, I ask, on the complaint of anybody, to reopen the thing to provide for further trials in favor of dissatisfied claimants, and particularly when those claimants are not *resting upon the ground of an absolute right, but are only resting upon the generosity of the government* which was exerted in the passage of the act of 1877, giving them the privilege of purchasing the land at its value, to the exclusion of others?"

Cong. Rec., 2d sess., 46 Cong., March 18 and 19, 1880.

Senator Davis, once a member of this court, said: "I move to strike out from section one to section eight, inclusive, of the substitute reported by the Committee on Public Lands. The first section simply authorizes these proceedings to be transmitted to the officers at Little Rock. That is being done by the Secretary of the Interior now. The other sections I have moved to strike out really

authorize *a new trial of the adjudications of the Hot Springs commission in the Court of Claims.*" * * *

Senator Conkling. "Tell me whether the substitute, as now amended, gives any recourse to those who complain of hardship under *the past adjudication?*"

Senator Davis. "*None at all. It receives the adjudication as final.*"

Cong. Reg., 2d sess., 46 Cong., March 18 and 19, 1880.

Senator Conkling (addressing Senator McDonald of Indiana). "May I ask the Senator from Indiana *why* the committee reported those sections giving an opportunity to correct errors?"

Senator McDonald. "I have already stated that there were some complaints made before us by parties, that the awards had not, in all respects, been right and just, and we thought it right to give them a chance *to have the matter reviewed.* I will state further that these complaints are not of such a character as, in my judgment, *should prevent this being a finality*, if the Senate see proper to *rest it where it will rest if the bill passes in its present form.* (That is, with the eight sections stricken out.) On the other hand, if any of these parties shall still come forward with complaints, it may be *in the power of Congress to do something for them hereafter*, if they present a good case."

Senator Teller. "I should like to ask the Senator from Indiana, how he can say this matter can come here again? This, as I understand, is the complaint on the part of these people, that the commissioners have misunderstood their rights. Now, by this bill, *the land passes absolutely to somebody*, the commissioners having adjudged it, perhaps, to the wrong persons. How can these men come here unless they come to seek *a moneyed consideration at the hands of Congress?*"

Cong. Rec., 2d sess., 46 Cong., March 19, 1880.

It may be said the utterances of these Senators amount to more than the expression of their individual opinion. This is conceded. Their standing as lawyers is equal to that of any in the land, and entitled to more consideration than that of ordinary members of Congress.

Let us look at that which induced the passage of this act. After the commissioners had filed their report with the Secretary of the Interior, some complaints of unfairness were made in relation to the awards. He transmitted the report to both houses of Congress, with the complaints. Upon the receipt of this report and the charges, a joint resolution was passed, *suspending all action under the act of 1877*, for the period of sixty days. During *that sixty days* the *House* prepared and passed a bill which authorized persons dissatisfied with the award to file a bill in equity, *in the District Court of the United States for the Eastern District of Arkansas*, where a

trial *de novo* could be had. This bill went to the Senate, where all the sections of the House bill, so far as they related to proceedings in the Circuit Court of the United States in Arkansas, were stricken out, and in lieu thereof jurisdiction *was given to the Court of Claims* to hear the disputes upon *certiorari*. After considerable discussion in the Senate, the sections of the bill which provided for a review by *certiorari, were stricken out.* The striking of these sections out of the bill left seven, *and these constitute the seven sections now found in the act of June 16, 1880.*

It thus appears that Congress, *after the whole matter had been fully presented, refused to allow the action of the commission to be disturbed.* It also appears that the persons who desired to have the awards reopened were of opinion that Congress had jurisdiction of the matter of disposing of the public lands.

THE ACT OF 1880 CONFIRMS THE AWARDS.

After denying all right of review, let us see what Congress did in the way of affirmative action. It was legislating in relation to land having well defined boundaries and that was capable of identification. It had before it, in the report of the commissioners, the name of the persons in whose favor the right to purchase had been adjudged, a map of his lot, and the number thereof. All that remained "to settle the titles at Hot Springs" was an act making that award absolute. With that object in view, Congress, by the first section of the act of 1880, declared:

"That any *person*, his heirs or legal representatives, in whose favor *the commissioners appointed under the acts of Congress of 1877 and 1878, relative to the Hot Springs of Arkansas, have adjudicated*, shall have the sole right to enter and pay for the amount of land the commissioners may have adjudged him entitled to purchase, etc."

Our contention is, that no matter how erroneous the decision of the commissioners may have been, that this act granted the lots absolutely to the persons in whose favor they have adjudicated. That this act is a legislative confirmation of the awards made by the commissioners and a legislative grant of the lands subject to the sole condition of payment of the price stipulated for.

Bear in mind that at the time this statute was passed, the award of the commission *was before both houses of Congress;* that they were dealing *with the disposition of these lands*, and that it knew *to whom awards had been made*, and what proportion had been awarded the government. Bear in mind that at that time the rights of *no man had become so fixed* that Congress could not withdraw or change the terms of the act of 1877, and confer the right to purchase *on another and different class.* This is what we claim it did do.

THE ACT OF 1880 IS, IN EFFECT, A NEW GRANT AND TO KNOWN PERSONS.

Under the act of 1877, four things were necessary to acquire any rights thereunder.

1st. That the person applying to the commissioners must have made *an improvement upon the property claimed*, prior to the 24th of April, 1876, and it may be admitted that such claimant or occupant had to be one who made such improvement under an assertion of title, or a pre-emption claim.

2d. That such claim should be submitted to the commissioners, within six months after the first sitting of the board.

3d. That said *commissioners* should adjudge the claimant or occupant *a right to purchase*.

4th. That the claimant or occupant, so adjudged the right to purchase, would pay for the same *within twelve months*, after proper notice, *the full price fixed on the lot or lots so awarded him by the commissioners*.

These were the terms of the *first* grant. No claimant or occupant ever complied with the terms of *that* grant, and hence, never acquired any rights thereunder. Before any rights could be acquired thereunder, Congress passed the act of 1880, and granted the right to purchase, *not to the claimants or occupants* who had made the improvements *mentioned in the act of 1877*, but *to the persons in whose favor its own commissioners had adjudicated*, not upon the condition of paying the *price fixed upon the lots by the commissioners*, but at *40 per cent.* of that price; not upon condition payment should be made in *twelve months*, but on condition payment should be made in *eighteen months*.

The grant under the act of 1880 is not made the same class, nor at the same price. The words claimants and occupants are dropped from the granting part of the act, and a grant is made directly, to "any person in whose favor the commissioners appointed under the acts of Congress of 1877 and 1878, have adjudicated" at 40 per cent. of the value originally placed thereon by the commissioners. The first grant was to persons whose names they had to appoint a commission to ascertain. The second grant was made to persons whose names *they had ascertained*, and at 40 per cent. of the price fixed for the class named in the act of 1877.

Can any member of this court say that Congress would have *granted this reduction* of price to the persons named in the report of the commissioners, if the commissioners had placed the construction on the act, this court says they *ought to have done?* But whether it would or not, it made the grant to the appellants and we have to deal with a grant made by Congress directly to these persons and not with what powers the commissioners had or whether they erred in a matter of law. If they erred Congress has cured that error.

Congress has declared, that the persons in whose favor the commissioners have adjudicated, shall have the sole right to purchase. After such a declaration can this court say they shall not purchase, or if they do, their deeds shall be cancelled and their titles vested in the appellees? Would this not be an interference with its right to dispose of the public domain?

The eleventh section of the act of 1877, declared, "That any *claimant* or *occupant*, his heirs or legal representatives, in whose favor said commissioners have adjudicated, shall, under such rules and regulations as the Secretary of the Interior may prescribe, have the sole right to enter and pay for, at the price *fixed by said commissioners*, the amount of land the commissioners had adjudged that they were entitled to purchase, at any time *within twelve months* next after the land officers give the public notice herein required."

As will be observed, the right to purchase given, by the eleventh section of the act of 1877, is "to any *claimant* or *occupant*, his heirs or legal representatives *in whose favor the said commissioners have adjudicated*." Now, let us see what Congress did with the "*claimants*" and "*occupants*."

The first section of the act of 1880 declares: "That any *person*, his heirs or legal representatives, in whose favor the commissioners *appointed under the acts of Congress of 1877 and 1878*, relative to the Hot Springs of Arkansas, *have adjudicated*, shall have the sole right to enter and pay the amount of land the commissioners may have adjudged him entitled to purchase, *within eighteen months, etc.*"

It will be seen that Congress had ceased to deal with "*claimants*" and "*occupants*," and gave the right to purchase, not to a *claimant* or *occupant*, but to a *person* in whose *favor the adjudication had been made*, and whose name was then on the report before each house of Congress. The first section of the act of 1880 was a new and distinct grant, not only as to the *price* to be paid for the lands, but *to another class of persons*. The act of 1877 was to *unknown* persons, and at such price as *the commissioners might fix* on the land. The grant under the act of 1880 was to *specific persons*, regardless of whether the commissioners *had adjudged correctly*, and at *a much less price*.

Suppose the citizens of Hot Springs had prepared just such a map as was prepared and found in the case of Smith v. Gaines, showing the boundaries of their claims and giving the name of the claimant and the number of his lot, and suppose Congress had passed an act declaring that the persons whose names appeared thereon should have the sole right to purchase the same for the period of eighteen months, can there be any question that such an act would not have given to the persons whose names appeared on the map the exclusive right? If, after that grant had been made, a person had come into a court of equity and set up that his name, when the map was presented to Congress, was on that map, and before the passage of the act had been erased, either by a known

or unknown person, would this court undertake to correct the grant?

None of the persons who appeared before the commissioners acquired a *vested right to anything*. Congress, instead of extending the existence of the commission, as it did for another year, could have refused to have done so, and no rights would have been acquired under the act of 1877.

Justice Catron, in speaking of the acts of 1829 and 1836, in relation to the town of Galena, Ill., which granted to persons rights similar to those conferred by the act of 1877, said: "The government was the absolute owner. Congress might have repealed the acts of 1829 and 1836 at any time before the actual purchases were made by those claiming a preference, and the lands sold at auction Up to the date of entry and purchase the title was in the United States."

Morehouse v. Phelps, 21 How., 302.

This court in *Langdeau v. Holmes, 21 Wall, 521*, said: "A legistive confirmation of a claim to land is a recognition of the validity of such claim, and operates effectually, as a grant. If the claim be to defined boundaries, or capable of identification, the legislative confirmation perfects the title to the particular tract, *and a subsequent patent is only documentary evidence of that title.*"

In the *Railroad v. Railroad, 97 U. S., 491*, this court said: "In construing a congressional grant, it is always to be borne in mind, that the act by which the grant is made, *is a law*, as well as *a conveyance*, and that such effect must be given to it as will carry out the intent of Congress."

That the claims of the persons in whose favor the commissioners had adjudicated, had defined boundaries and were capable of identification, will not be denied. That there was a person to take, a thing to receive, and a consideration to be paid for it, will not admit of discussion. That the person did take, and that the consideration has been paid, stands admitted by the pleadings.

THE PROVISO TO THE SIXTH SECTION OF THE ACT OF 1880.

But it may, and no doubt will be said, that there is a proviso to the sixth section of the act of 1880, which preserves the rights of claimants, who had been adjudicated against.

The section to which the proviso is attached is as follows: "That the streets, courts, and alleys and other thoroughfares of the town of Hot Springs, as surveyed, opened, or established by the commissioners and represented on the map of said town, and not included in the permanent reservation be, and the same are hereby, ceded to the corporation of the town of Hot Springs for public use. *Provided, however*, That nothing in this act shall be so construed as to impair the right or equities conferred on claimants to said lands by an act

of Congress approved March 3, 1877, and an act approved December 16, 1878, in relation to the Hot Springs reservation."

Sometimes a proviso has some relation to the subject matter of the section in which it is found, but this is not that kind of a proviso, unless it was the intention of Congress to give the claimants, whose lots had been taken for streets and alleys, the right to go into the courts and recover the property so taken. Yet, such a construction would lead to no more absurdity or repugnancy than to apply it to any other section in the act.

The Hot Springs commissioners in their report state, "That during the six months, nine hundred and fifty claims were filed, in the form of petitions, setting forth the grounds on which each claim is based." They further state: "The number of certificates issued for the right to purchase land, is six hundred and forty-seven." (Sen. Ex. Doc. No. 21, 46 Cong., 2d sess.) It would appear from this, that the claims of *three hundred and three* claimants were rejected. It also appears from the same report, that 1435 lots were awarded claimants, and that 584, to which claims were preferred, went to the United States. We now have *two* kinds of claimants, some of whom claimed lots awarded *to the United States* and some of whom claimed lots *awarded individuals*.

DOES NOT CREATE A FIDUCIARY RELATION, OR TRUST.

That which at first bothered me about this proviso was, as to the relations, if any, it created between the holder of the title and the class in whose favor the reservation is made. That it did not create any *fiduciary* relation between the patentee and the claimant has been settled.

In *Gregg v. Forsyth, 24 How., 182*, the patent contained this provision: "Subject, however, to the rights of all persons claiming under the act of Congress of March 3, 1823, entitled, An act to confirm certain claims to lots in the village of Peoria, in the state of Illinois,' and the act itself contained these words: 'Provided nothing in this act contained shall be so construed as to affect the rights, if any such there be, of any other person or persons, to the said lots." In speaking of the effect of this provision, this court said:

"This court, in the cases of *Bryan v. Forsyth* (*19 How., 334*), and again in *Meehan v. Forsyth*, at this term, have decided that the saving in the patent, under which the defendant's claim did not create any *fiduciary* relations between the claimants under the act of 1823, and the patentee."

That the reservation in the act of 1880 does not create a trust is settled by the case of *Dredge v. Forsyth, 2 Black, 564*.

It is laid down in Dwarris on Statutes, p. 272, that, "A saving must be of something *in esse*; the nature of the saving is to preserve *a former right* and not to give *or create a new one*."

The only rights that were *in esse* at the time of the passage of

the act of 1880, or that had the semblance of a right, were those which had been established or declared by the commissioners in adjudging to whom the preference of purchase should be given.

Again it is stated in Dwarris on Statutes (117), that, "A saving clause in a statute, where it is directly repugnant to the purview of the statute, and cannot stand without rendering the act inconsistent and destructive of itself, is to be rejected."

In the *United States v. Dickson, 15 Peters, 165*, Justice Story, in speaking of the effect of the proviso, says:

"That where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that the proviso is to be construed strictly, and takes no case *out of the enacting clause* which does not fall *fairly within its terms*."

Minis v. United States, 15 Peters, 134.

The eleventh section of the act of 1877, declares:

"That any claimant or occupant, his heirs or legal representatives, in whose favor said commissioners shall have adjudicated, shall, under such rules and regulations as the Secretary of the Interior may prescribe, have the sole right to enter and pay for, at the price fixed by said commissioners, the amount of land the commissioners had adjudged they were entitled to purchase, at any time within twelve months next after the land officers give the public notice required."

I call attention to this section for it contains an expression of the *right* that *is preserved by the proviso*. That act, if it does anything, simply preserves the rights and equities that were proffered by the act of 1877.

The right to *purchase*, under the act of 1877, was dependent upon the condition the *commissioners* should *adjudicate in favor* of the person applying to purchase; and the price to be paid was, such value as should be placed thereon by the commissioners. The term of office of the commissioners has expired, and there is no tribunal now in existence *before which their rights may be adjudicated*. Congress may create another tribunal to adjudicate in relation to the lots not yet disposed of, but until it does, the rights preserved by the proviso, must remain in abeyance.

THE PROVISO DOES NOT CONFER JURISDICTION ON THE COURTS WHERE NONE EXISTED BEFORE.

That the proviso to the sixth section was intended to do aught than preserve a supposed right of equity which was bottomed on the act of 1877-8, I presume will not be contended, for the language of the reservation confines the preservation to such rights and equities as are conferred *by the two acts mentioned*. There is nothing in the language of the proviso granting a power to the courts to hear and determine anything of which the courts *did not*

have jurisdiction before. The grant of jurisdiction to the courts had been in the original bill, and this had been stricken out, *with the assent of both houses of Congress.* This fact *negatives* the idea that the proviso was intended *to confer any additional jurisdiction on the courts* over that already possessed

It may have been suggested, although there is nothing in the debates to show that such suggestion was made, that the legislation proposed by the act of 1880, would have the effect to deprive a claimant *of a right which the courts might enforce*, but for the language *of the new grant*, and that, by way of compromise between those who refused the courts the right to interfere, and those who were disposed to grant a review, a concession was made (for the proviso was placed in the act by a conference committee), that *if* the courts possessed such power, they might exercise it. It may be that, what is intended was, if any such rights *are cognizable by the courts*, well and good; and if not, this ends the matter. If this suggestion is correct, then, what Congress has said is, *if such jurisdiction exists*, we will not take it away; but if it does not, *we will not grant it.*

Whatever the fact may have been, one thing is clear, and that is that Congress absolutely refused not only in 1877, but in 1880, to grant jurisdiction to the courts to review the awards of the commission. The most that can be said of the proviso is, that Congress left the claimants who were dissatisfied, standing just where they would have stood, so far as asserting rights in the courts was concerned, if the act of 1880 had never been passed. That is the most that can be claimed.

There is another view of the matter which suggests itself, and that is, that Congress possibly contemplated, at some time in the future, to take the matter of the awards into consideration, and merely intended to save to itself the right to make further inquiry.

Congress could foresee the confusion and litigation which would follow if it granted the courts jurisdiction, and it probably reasoned, if the courts have jurisdiction we cannot take it away, but if they have not we will not grant it. This being true, we come back to the act of 1877, and the question is, whether under that act, the courts could interfere?

It is unnecessary to repeat, or go over the ground stated, in the earlier part of the argument. The history of the legislation, in relation to the creation, and the conclusiveness of the findings of boards of commissioners, clothed with the powers the Hot Springs commissioners were, and the former adjudications of this court, that they belonged to the political department of the government, and could not be supervised or reviewed by the courts, is yet fresh in the mind of the court, and need not be repeated.

THE PROVISO IS REPUGNANT TO THE PURVIEW OF THE ACT.

The seventh section of the act which provides for the disposition of the sale of the 534 lots awarded the government will now be set forth, with the proviso attached to it.

"Section 7. That that portion of the Hot Springs reservation laid off into lots and blocks and forming a part of the town site, but not awarded to any claimants, * * * shall be sold at public auction to the highest bidder at not less than its appraised value, * * * under the direction of the Secretary of the Interior. * * * *Provided*, however, that nothing in this act shall be so construed as to impair the rights or equities conferred upon claimants to said lands by an act of Congress, approved March 3, 1877, and an act approved December 16, 1878, in relation to the Hot Springs reservation, etc."

It will be asked why I place the proviso at the close of this section instead of the first? My answer is that I find it in that neighborhood and place it there because I find the word "claimants" in that and the fifth sections of the act of 1880, and do not find it in the first. As these sections use the same word, every canon of construction requires that we should look among its kindred, rather than among strangers, to find a tie of consanguinity. I apply it to this section because it is one that provides for the disposition of 584 lots *awarded the government*, by the commissioners, and because the presumption is that whatever rights and equities are preserved by the proviso are equally applicable to the lots awarded the government, *as to those awarded to individuals*. What effect does the proviso have on the seventh section? Does it extend a right of action to the unsuccessful claimant against one who might become a purchaser at the sale authorized by the Secretary of the Interior?

Did the government intend to put its lots on the market and sell them to the highest bidder, and preserve to the persons who had been claimants for these lots *the right to institute an action to have the purchaser declared a trustee for the purchaser, and vest the title in the person who had been a claimant?* From the organization of the government down to the present hour, no case can be pointed to where it has offered *law suits* for sale instead of *titles*. Did Congress intend that, as to the lots awarded the government, *they should be free from the operations of the proviso*, and that the lots *awarded individuals*, by the same tribunal, should be sold *with a lawsuit attached?* Will you put Congress in the dishonest attitude of saying that, in so far as the award of the commissioners is concerned, they made it valid as to adjudications IN FAVOR OF THE UNITED STATES, but not conclusive AS BETWEEN CITIZENS?

I maintain that if the proviso can have any application at all, it must be to the sections that make some disposition of the property constituting the reservation, for the right to be adjudged a right to purchase property, was all that was conferred by the act of 1877.

We will, therefore, proceed to the examination of the other sections of the act making disposition of that portion of the reservation that, under the terms of the act of 1877, was not reserved. It may be stated, in passing, that the reservation authorized by the fourth section of the act of 1877, was 265 acres.

The fifth section, with the proviso, will now be examined and it is as follows:

"That the Secretary of the Interior is hereby authorized to designate six lots from the unawarded grounds for the use of the common schools of the corporation of Hot Springs as sites for school houses. * * * *Provided, however,* That nothing in this act shall be so construed as to impair the rights or equities conferred upon claimants to said lands by an act of Congress approved March 3rd, 1877, and an act approved December 16, 1878, in relation to the Hot Springs reservation."

Another portion of said section declares: "The Secretary of the Interior is also authorized to convey to the Baptist Church of Hot Springs, whose church edifice was destroyed by fire, a suitable lot of ground * * * forming part of the town site, but not awarded to any claimants. * * * *Provided, however,* That nothing in this act shall be so construed as to impair the rights or equities conferred upon claimants to said lands by an act of Congress approved March 3, 1877, and act approved December 16, 1878, in relation to the Hot Springs reservation."

The fourth section of the act declares: "That whenever the town of Hot Springs shall procure elsewhere a suitable burying ground, and shall cause the bodies now buried in the cemetery lot, within the limits of said town, to be decently removed and interred the title to said cemetery shall vest in the corporation of said town to be held and used forever as a town or city park. *. * * *Provided, however,* That nothing in this act shall be so construed as to impair the rights or equities conferred upon claimants to said lands by an act of Congress approved March 3, 1877, and an act approved December 16, 1878, in relation to the Hot Springs reservation."

It now appears that as soon as the dead are removed from their resting place, and title is acquired by the City of Hot Springs to the ground in which they are interred, the claimants mentioned in the proviso, if it means that a right of action is preserved to them, may institute suit to have the city declared a trustee for the claimant, on the ground that the commissioners misjudged the law in the contest between him and the United States. It also appears, when the Baptist Church has received a conveyance from the Secretary of the Interior for the lot which the government grants it, some wretch, not having the fear of God before his eyes, may institute a suit to have the church declared his trustee. It also appears that as soon as the Secretary of the Interior conveys the six lots on which school houses are to be erected, a claimant may institute a suit to have the common schools declared a trustee. It also appears that whenever

the Secretary of the Interior orders the 584 lots sold and they pass into the hands of private persons, that a former claimant may come into court and ask that the purchaser be declared a trustee.

One would think that the designs on the trestle board, by which the judicial mind is to be guided, were sufficiently obliterated, without attempting to place this proviso at the end of the first section, and thereby make confusion worse confounded.

But let us put the proviso at the end of the first section of the act of 1880. It will then read: "That any person, his heirs or legal representatives, in whose favor the commissioners appointed under the acts of Congress of 1877 and 1878, relative to the Hot Springs of Arkansas, have adjudicated, shall have the sole right to enter and pay for the amount of land the commissioners may have adjudged him entitled to purchase, within eighteen months after the expiration of the notice required by the tenth section of the act of Congress of March 3, 1877, * * * at forty per centum of the assessed value of said land as placed thereon by said commissioners. *Provided, however*, That nothing in this act contained shall be so construed as to impair the rights or equities conferred upon claimants to said land by an act of Congress approved March 3, 1877, and an act approved December 16, 1878, in relation to the Hot Springs reservation in the State of Arkansas."

By the sixth section of the House *bill* it was provided, "That all claimants who failed to get an award for the lands they claimed shall, *although said lands may not have been awarded to others*, and provided the same shall not be included in the permanent reservation, have *the same right of revision*, as prescribed in section 3."

The second section of the bill, as amended by the Senate Committee on Public Lands, gave the right of review to any occupant or claimant to any portion of the reservation, except that which was to become a part of the permanent reservation, *where the award had been made to the government.* If the proviso had been attached to the third section of the act of 1880, which declares: "That those divisions of the Hot Springs reservation, known as the mountainous districts, not divided by streets on the maps made by the commissioners, but known and defined on the map, and in the report of the commissioners as North Mountain, West Mountain and Sugar Loaf Mountain," shall be reserved, it could be given some force and effect without becoming repugnant to any other portion of the act, as a reservation of the rights to person, who had applied for awards therefrom, and had been denied by the commissioners.

In speaking of these mountains the commissioners say: "These mountains are largely covered with trees, and are, for the most part unclaimed. They have not been adjudicated to any one, and are of that class of lands which remain under the law to be sold at public auction, * * * and have been appraised at such a rate as to prevent their sale, with a view to their reservation as public parks by act of Congress."

As to *these* lands I can understand how Congress might desire to protect the rights of the claimants, in the event it should *ever conclude to make disposition of them*, but I cannot understand, nor can any one else, why it should undertake to reserve the rights of a claimant to lands that it was intending to make *immediate disposition of and issue patents to.* By confining it to that section it can have some application, but when you extend it beyond that, instead of the act becoming one "for the establishment of titles at Hot Springs," it becomes one that provides for endless litigation, and instead of being entitled, "An act for the establishment of titles at Hot Springs," it ought to be called "An act to encourage litigation, and to cloud the titles of persons acquiring lands from the United States."

Congress never intended by the language in the proviso to authorize the institution of 2000 law suits. It never intended to cloud the title to the 584 lots that it authorized the Secretary of the Interior to place on the market. If it cannot be made to cloud the title of the government it cannot be construed to cloud the titles of the citizen.

In the face of the condition of affairs produced by the proviso, the rule laid down by Justice Story, in *United States v. Dickson, 15 Peters*, should be enforced. That is:

"Where the enacting clause is general in its language, and a proviso is afterwards introduced, the proviso is to be construed strictly and so that it takes no case out of the enacting clause, which does not fall fairly within its terms."

By confining the proviso *to the third section of the act of 1880*, the title to persons to whom the government sold the lots in controversy and received the purchase money, ten years since, will be upheld. By confining it to that section, the government will have title to the 584 lots awarded it, and the purchasers at its sale will take good title, and the proviso can have some operation and effect, without putting the United States in the attitude of selling land to which it professes to have title, and receiving money therefor, to which it has neither a legal or equitable interest, if the contention of the appellees is true.

If this rule cannot be applied, then we insist on the application of the rule laid down in Dwarris on Statutes, which declares that if the proviso is repugnant to the purview of the act, and destructive of its declared object (to settle titles at Hot Springs), it should be rejected, and for the further reason that the claimants had no rights *in esse*, to which the proviso could attach, at the time of its enactment.

THE DECREE IS ERRONEOUS IN THE MATTER OF RENT.

A decree is rendered against all the appellants for rent and they are charged rent for a vacant lot, at the rate of from $10 to $12.50,

per foot front per annum, for seven or eight years. These rents are excessive and extortionate; so much so, that this court, in *Lawrence v. Rector*, modified the decree, charging only the amount of rent received from the leased property by the appellant. The following table will show the amount of rent included in the decree and that should be stricken out, if the court should find the decree to be correct in other respects:

Term No. 302,	Smith v. Gaines	$ 3,852.29
303,	Dugan v. Gaines	2,261.30
304,	Cohn v. Gaines	5,725.73
305,	Allen v. Gaines	3,302.00
306,	Madison v. Gaines	2,604.50
307,	Rugg v. Gaines	2,073.06
308,	Garnett v. Gaines	4,325.25
309,	Garnett v. Gaines	1,844.11
310,	Rugg v. Gaines	2,206.65
311,	Granger v. Gaines	1,834.50
312,	Neubert v. Gaines	1,804.80
313,	Sumpter v. Gaines	2,586.35
314,	Latta v. Gaines	3,386.35
315,	Latta v. Gaines	2,967.99

In the case alluded to (*Lawrence v. Rector, 137 U. S., 139*), this court said:

"The measure of liabilty is not the rental value, but the actual receipts." The testimony does not disclose the actual receipts, as that phase of the case was not referred to the master. In point of fact, no rent was received by any of the appellants from the lots in controversy.

If any rent be allowed at all it ought not to be for a period beyond the date of the filing of the bill. The appellants had their patents for more than three years before the suits were commenced, and lived in the same town with the appellees, and no excuse is given for not commencing the suits at an earlier day.

These changes will necessitate the rendition of new decrees in all the cases.

It is further submitted that inasmuch as appellants hold title under the adjudication of a tribunal created under the laws of the United States, that they are not properly chargeable, in equity and good conscience, with all the costs of suit, in view of the laches of the appellees.

JOHN McCLURE,
For Appellants.

APPENDIX "A."

46th CONGRESS, 2d Session. [Printer's No., 1976.

H. R. 4244.

[Report No. 179.]

IN THE HOUSE OF REPRESENTATIVES,

FEBRUARY 5, 1880.

Read twice, recommitted to the Committee on the Public Lands, and ordered to be printed.

MR. DUNN, from the Committee on the Public Lands, reported the following bill as a substitute for H. R. 3549:

A BILL

For the establishment of titles in Hot Springs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be the duty of the Secretary of the Interior, within ten days after the passage of this act to transmit to the United States land office at Little Rock, Arkansas, the final report of the commissioners appointed under an act approved March third, eighteen hundred and seventy-seven, entitled "An act in relation to the Hot Springs Reservation in the State of Arkansas," together with the survey and map made by said commissioners, and accompanying their said report, which report and map show the award of titles to lands made by the commissioners under the provisions of said

act; and shall instruct the United States land officers at Little Rock to allow the lots and lands awarded to individuals or associations on the Hot Springs Reservation to be entered as hereinafter provided, and shall cause patents of the usual form used in the sale of public lands to be issued therefor except in cases hereinafter to be specified; and it shall be the duty of the land officers at Little Rock to give thirty days' notice in the Little Rock and Hot Springs newspapers of the time when said lands will be subject to entry under the provisions of this act.

SEC. 2. That any persons, their heirs or legal representatives, in whose favor said commissioners, or the court to which appeals may be taken under the provisions of this act, shall have finally adjudicated, shall have the sole right to enter and pay for the amount of land the commissioners may have adjudged them to be entitled to purchase, at any time within twelve months next after the expiration of the thirty days' notice by the land officers required in the preceding section to be given, by paying on every separate certificate of award covering a lot of one acre, or of any fraction of an acre, the sum of ten dollars; and on every separate certificate covering more than one acre but not over two acres, the sum of twenty dollars; and on every separate certificate covering more than two acres but not over three acres, the sum of thirty dollars; and so on at this rate, paying an additional ten dollars on every additional acre or fraction of an acre covered by any certificate.

SEC. 3. That a revision may be had in equity of the adjudications and award, of the right of entry of lots made by the commissioners, the correctness of which may be questioned on account of fraud, gross error, or mistake, and to that end jurisdiction is conferred upon the District Court of the United States for the Eastern District of Arkansas, and said court shall be deemed as open at all times for the exercise of the jurisdiction hereby conferred. Any and all persons feeling themselves aggrieved by any award or decision made by the commissioners for the causes aforesaid may apply to the judge of said court for an order suspending the entry or sale of the lot or lots to which they feel themselves entitled, not awarded them, and not included in the permanent reservation, at any time within twenty days after the first publication of the notice of the opening of the land-office as aforesaid, by preparing their bill of complaint upon which the application is to be made, and delivering a copy thereof to and serving notice upon the adverse party of the intended application, five days prior to the date of such application, or in default of such delivery of a copy and notice, shall satisfy the court of their inability to do so. If, upon consideration of the

bill and affidavit supporting it, in conjunction with the answer, should any be filed, and affidavit supporting it, or, in default of answer, upon the bill alone, the judge shall be of opinion that a case for equitable intervention on the grounds of fraud, gross error, or mistake as aforesaid is primarily made, he shall make an order suspending the entry or sale of the lot or lots involved in the suit, and cause a copy thereof to be delivered to the land officers at Little Rock, Arkansas, prior to the opening of their office for entries as herein provided, which order shall be obeyed until countermanded by the court or Secretary of the Interior. Parties not served with a copy of bill and notice as aforesaid shall be brought before the court by the usual process, when an order of suspension has been made as above provided, and may file their answer, with affidavits supporting it, and if, upon consideration thereof, together with the bill, the court is of opinion that a case for equitable intervention is not primarily made, the order suspending the entry shall be vacated, the cause dismissed, and the land officers served with a copy of the order vacating the suspension, after which entries or sales may be made as though such suspension had never been ordered.

SEC. 4. That all cases presented as aforesaid, in which a suspension of entries shall be ordered, as above provided, the court shall proceed to ascertain, try and determine the better right as between the contestants, and to that end may admit exemplifications of the maps and plats of the land office at Little Rock, Arkansas, and the testimony taken before the commissioners; and it shall be the duty of the Secretary of the Interior to make, or cause to be made such exemplifications, and to transmit the testimony so taken as aforesaid upon the proper demand of the court; and the court shall admit any other and further testimony before it essential to the proper determination of such causes, and may at all times make such rules as may be needful to secure costs and bring such causes to a speedy hearing and determination.

SEC. 5. Upon the determination of such causes the court shall certify its decision in each case to the Secretary of the Interior, and thereupon he shall issue the necessary instructions to the land officers at Little Rock, Arkansas, to permit entries in conformity with the decision of the court, as provided by the second section of this act, at any time within twelve months next after the date of such instructions.

SEC. 6. That all claimants who failed in whole or in part to get an award for the lands they claimed, shall, although said lands may not have been awarded to others, and provided the same be not included in the permanent reservation, have the same right of revision, subject to the same conditions

as prescribed in section three of this act; and if the judgment of the court be in their favor, it shall be the duty of the Secretary of the Interior to instruct the land officers at Little Rock to allow entries of said lands, in accordance with the judgment of the court, upon payment being made according to the rate established in section two of this act, at any time within twelve months after the date of the decision of the court in the case: *Provided*, That this shall not apply to lots or lands set apart for school or church purposes.

SEC. 7. That those divisions of the Hot Springs Reservation, known as the mountainous districts, not divided by streets on the map made by the commissioners, but known and defined on the map and in the report of the commissioners as North Mountain, West Mountain and Sugar Loaf Mountain, be, and the same are hereby, forever reserved from sale, and dedicated to public use as parks, to be known, with Hot Springs Mountain, as the permanent reservation.

SEC. 8. That whenever the town of Hot Springs shall procure elsewhere a suitable burying-ground and shall cause the bodies now buried in the cemetery lot, within the limits of said town, to be decently removed and reinterred, the title to said cemetery lot shall vest in the corporation of said town, to be held and used forever as a town or city park, and not otherwise.

SEC. 9. That the Secretary of the Interior is hereby authorized to designate as many as six lots from the unawarded grounds on the Hot Springs Reservation for the use of the common schools of the corporation of the town of Hot Springs, as sites for school-houses, and the lots when so designated are hereby dedicated to the use of common schools, and shall be used, controlled and managed by the common-school officials of the district in which they may be located for such purposes only.

SEC. 10. That the streets, courts, and alleys, and other thoroughfares of the town of Hot Springs, as surveyed, opened, or established by the commissioners, and represented on the map of said town, and not included in the permanent reservation, be, and the same are hereby, ceded to the corporation of the town of Hot Springs.

SEC. 11. That that portion of the Hot Springs Reservation laid off into lots and blocks and forming part of the town site, but not awarded to any claimants, and not otherwise disposed of or reserved by this act, shall be sold at public auction to the highest bidder, at not less than its appraised value, from time to time, at the discretion of the Secretary of the Interior, and after public notice in the usual way in the sale of public lands; and the money arising from said sales, as well as the money paid in under sec-

tion two of this act, shall be held as a special fund for the improvement and care of the permanent reservation at Hot Springs and of the Hot Springs Creek adjacent to and between the permanent reservations, and for the maintenance of free baths for the invalid poor of the United States, as provided by acts of Congress.

SEC. 12. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

46TH CONGRESS, 2D SESSION. } H. R. 4244.

[Report No. 179.]

A BILL

For the establishment of titles in Hot Springs and for other purposes.

FEBRUARY 5, 1880.—Read twice, recommitted to the Committee on the Public Lands, and ordered to be printed.

APPENDIX "B."

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 179.

TITLES AT HOT SPRINGS, ARKANSAS.

FEBRUARY 5, 1880.—Recommitted to the Committee on the Public Lands and ordered to be printed.

Mr. DUNN, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 4244.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 3549) for the establishment of titles in Hot Springs, and for other purposes, submit the following unanimous report:

The town of Hot Springs, noted for the wonderful healing properties of its thermal waters, is located in Garland County, in the State of Arkansas, in a narrow valley between the rocky ridges of one of the lateral ranges of the Ozark Mountains, a district of country difficult of access until the recent construction of a narrow-gauge railroad faom Malvern to that place. Though difficult of approach, and in a district of country claimed by the Indians until after the treaty made with the Quapaws in 1818, this noted watering place was visited by invalids and others as early as 1810 and 1812. Temporary cabins were erected by visitors and those who resorted there for purposes of trade, but were then occupied only a portion of the year.

The permanent settlement of the place commenced immediately after the extinguishment of the Indian claim in 1818, and has continued to the present time, steadily increasing in population, which is at present estimated at something over 5000. The growth of this town to its present magnitude has been accomplished under the most unfavorable circumstances, and its misfortunes are yet "cluster-

ing thick" upon it. Hitherto all so-called remedial measures seem only to bring forth fresh and ever increasing ills. Doubts, clouds, and shadows have hung upon their claim of title, begetting a feeling of insecurity and engendering controversies and litigation that has seemed interminable. The lands upon which this town is situate have been the subject of legal contention for full forty years, and every conceivable method which professional ingenuity could devise has been resorted to to obtain, directly or indirectly, the adjudication of a court upon the rights of the parties.

No one has yet received a patent or acquired the legal title, but each of the original contestants has constantly claimed that he was the equitable owner of the property.

The first of these claims is known as the Percifull title, represented by Hale in the suit before the Court of Claims, and was a pre-emption claimed under the act of April 12, 1814, and prior inhabitancy and cultivation of the tract claimed by John Percifull.

The second is known as the Rector title, and was founded upon a location of what was known as a New Madrid certificate, located by Samuel Hammond and Elias Rector in 1820, under the provisions of the New Madrid act of February 17, 1815. This claim was represented in the suit above referred to by the claimants Rector, McKay and Gitt, and Russell.

The third is that known as the Belding title, and was founded on a claim of pre-emption under the act of May 29, 1830, and was represented in said suit by the claimants Gaines *et al.*

The property which was so long the subject of litigation between these three sets of claimants was the hot springs, but the suits of the parties were not all directed to precisely the same tract of land; but a corner of each tract sued for overlapped and included the hot springs, which constituted the real value of the property.

It may be well to briefly review these conflicting claims, and the acts of Congress under which they claimed rights.

It was claimed by the representatives of John Percifull that, as early as 1813, when the Hot Springs was only approachable by a bridle-road or foot-path, he built the first house at the springs.

Upon the trial of the cause the fact of his occupancy was not so much disputed as the character of it. It was urged by the adverse parties that he did not inhabit and cultivate, but that he only came to the springs during the summer to sell supplies to the invalid visitors who went there annually, and that they presented him with their camps, and that in this way he gradually acquired some buildings.

Congress passed the pre-emption act April 12, 1814. It provides "*that every person and the legal representatives of every person who has actually inhabited and cultivated a tract of land*," &c., "*shall be entitled to the right of pre-emption in the purchase thereof.*" Percifull claimed under this act.

What is known as the "New Madrid act" was passed and became a law February 17, 1816. It provides "*that persons whose lands*

have been materially injured by earthquakes shall be, and they are ereby, authorized to locate the like quantity of land on any of the public lands of the said territory the sale of which is authorized by law."

That act also provides for the ascertainment of this fact by the recorder of land titles, for the issuance of a certificate by him entitling the holder to locate upon other public land, for the location under this certificate on the application of the claimant by the principal deputy surveyor for the Territory, for a return of the plat and location to the recorder of land titles, and for the issuance of a certificate, and then of another or final certificate of location by him to the party.

The act of April 29, 1816, created a new office, subsequently known as that of Surveyor General.

In 1818 the Indian title to this part of the Territory was extinguished by the Quapaw treaty.

In 1818 a New Madrid certificate, dated the 26th of November, and numbered 467, was issued by the recorder for 200 arpents of land in favor of Francis Langlois.

In the same month Francis Langlois released and assigned this certificate to Samuel Hammond, who in turn assigned one-half interest therein to Elias Rector on the 19th of February, 1819.

In 1819 Hammond and Rector filed their application, dated the 27th of January, 1819, under this New Madrid certificate, for entry of 200 arpents of land, "*to be surveyed in a square tract, the lines of which to be corresponding with the cardinal points, and to include the hot springs.*"

In 1820 James S. Conway, deputy surveyor, returned and filed his survey, No. 2903, and plat of the location of Hammond and Rector's warrant in the office of the Surveyor General at Saint Louis.

In 1829 Ludovicus Belding occupied a house and cultivated a small plat of land as a garden at the Hot Springs. The house was owned by Percifull, and Belding entered it as his tenant. He continued to occupy and cultivate until after the 29th of May, 1830.

In 1830 Congress passed the act of May 29, which provides "*That every settler or occupant of the public lands prior to the passage of this act who is now in possession and has cultivated any part thereof in the year 1829, shall be, and he is hereby, authorized to enter with the register,*" &c., "*a quarter section.*" It also provides that the right of pre-emption contemplated by this act shall not extend to any land which is reserved from sale by act of Congress, &c.; "*and that this act shall be and remain in force one year from and after its passage.*"

In 1832 Congress passed the act of April 20, which provides that the Hot Springs "*shall be reserved for the future disposal of the United States, and shall not be entered, located, or appropriated for any other purpose whatever,*" retaining four sections in the reservation.

Acts extending the time persons entitled to make pre-emptions under the act of 1830, and who had not made proof and entered land in consequence of the public surveys not having been made and returned, &c., were passed and approved July 14, 1832, and July 19, 1834, and July 22, 1838.

In 1838 the first public survey around the Hot Springs was made, and the lands, except as reserved, were offered for sale.

In 1838 and 1839 and continuously until 1851 the widows and heirs of both Percifull and Belding made fruitless efforts to enter the land claimed by them respectively.

In 1851, after the land office had rejected the claim, Mr. Stuart, Secretary of the Interior, decided to permit the Belding heirs to make an entry *so as to place them in a position to test the claims of others to the same lands*, and accordingly, upon the payment of the price thereof, the usual certificate was issued, bearing date the 19th of December, 1851.

On June 7, 1860, Mr. Thompson, the Secretary of the Interior, decided that this entry was illegal, and directed that it be canceled.

In 1870 Congress passed the Hot Springs act, providing, among other things, "*that any person claiming title, either legal or equitable, to the whole or any part of the four sections of land constituting what is known as the Hot Springs Reservation,*" &c., "*may institute against the United States in the Court of Claims, and prosecute to final decision any suit that may be necessary to settle the same.*"

Under this authority the suits were brought and the cases of all the claimants were consolidated as against the United States and decided adversely to all the claimants, the court holding that no legal entry, location, nor pre-emption of said lands had ever been made, and that the whole of the four sections was still held by the United States as a reservation under the act of 1832.

This decision was, on appeal, affirmed by the Supreme Court of the United States.

This decision terminated the litigation that, during all these long years, had raged like a consuming fire, increasing with the increase and growth of population.

From a village of temporary camps, in a remote and unsettled part of the country, approachable only by bridle-roads or foot-paths, in 1812, Hot Springs has grown to be a city of more than 5000 inhabitants at the present time, and is now reached by railroad.

The present population of the city is largely made up of the afflicted invalids who have flocked to this great "fountain of youth" from all parts of the country. Finding relief from these healing waters, they have cast their lot there.

Nearly all claims of title to property in the place are derived from the old claimants. By many they were believed to have title to the lands they claimed, with a dispute only as to the ownership of the Hot Springs. Settlers did not hesitate to buy from them and erect

costly improvements. It is estimated that the present claimants have expended nearly a million of dollars in money and labor in the purchase and improvement of the property to which they now seek title from the government, and of which they found themselves, in effect, deprived by the decision of the Court of Claims and the Supreme Court. Many of these people have expended the energies and earnings of the better part of life there in the improvement and upbuilding of property to which they felt well assured that they had good title, and were absolutely unaware of the existence of any reservation. Upon these the decision of the courts has fallen like a clap of thunder in a clear sky.

Those who knew of the existence of the reservation knew that it was not a permanent reservation set apart for any special purpose, for by the very terms of the act itself it was "*reserved for the future disposal of the United States.*"

Assuming, even, that the existence of the reservation was well known, yet it was in a *territory open to settlement*, and it was but reasonable for these settlers to regard it in the light of the well-known and long established policy of the government to often withhold lands open to settlement from sale in order to enable settlers to enjoy the preference over speculators in acquiring homes. The policy of the government has been to aid those who went out into the wilderness to subdue it and to make homes. It has been, and should always be, its policy to offer to that adventurous and worthy class of citizens the advantage of selecting and securing in advance of the speculator the more desirable tracts of land in the new region for their homes. And the uniform policy of the land department yet is to retain the public lands in such a situation for a long time in order to give those who are willing to encounter the hardships and dangers of frontier life an opportunity to make selections and to settle upon them, and to make payment for them at the minimum price before any portion of such lands are offered to purchasers in general sale.

This is not only the policy as to those who inhabit and cultivate the soil for agricultural purposes, but the same wise policy obtains as to town sites upon the public lands. The act of May 23 1844, provided for the entry of town sites at the minimum price of $1.25 per acre. This act was changed by act of March 2, 1867, which makes a few needed alterations as to the number of acres, inhabitants, &c.

Section 2380 of the Revised Statutes authorizes the President to reserve from the public lands, whether surveyed or unsurveyed, town sites on the shores of harbors, at the junction of rivers, * * * or any natural or prospective centers of population. These reserved town sites may be entered by the corporate authorities, and if not incorporated, then by the county judge of the county, at the minimum price, and held in trust for the inhabitants and occupants thereof according to their several interests.

More than one hundred and fifty town sites have been entered at the minimum rate under the provisions of this law since 1873.

These wise and just laws were in force in 1870, when jurisdiction was conferred upon the Court of Claims to try the right to lands on which the town of Hot Springs was built, as between the claimants and the United States.

The judgment of the court was that the land in question was a reservation held by the United States "*for future disposal*," and yet belonged to the United States.

Hot Springs was an incorporated city of 5000 inhabitants, and entitled, under the law then in force, to enter 2560 acres of land as a town site at the minimum price of $10 per lot, whenever the government should decide to dispose of that portion of the reservation upon which it was built. The government, finding itself by this judgment the owner of the homes of 5000 of its children, should have been true to its ancient and uniform policy of tender care and protection of its citizens who had settled upon the public domain, and should have hastened to enact such measures as would render them secure in their homes and possessions. These people have not knowingly settled upon public land held in reservation. They have, in good faith, bought their land from persons who they had every reason to believe owned it; for one grantor (Rector) was able to exhibit a certificate of location, and another (Gaines) an actual certificate of entry from the land department of the government. Their condition, it would thus appear, should have appealed more strongly to the tender consideration of the government than the case of occupants who knowingly settle upon the public lands.

The needed remedy was simple, easy and inexpensive to the government. An act to define the boundaries of the permanent reservation intended to be held by the government, and allowing the corporate authorities of the City of Hot Springs to enter the lands embraced in the corporate limits of the city (not permanently reserved) for the benefit of the inhabitants and occupants thereof, in accordance with the provisions of the Revised Statutes, and directing the sale of the remainder, was all that was needed to give a full measure of relief to these people, and protect the public interest in these wonderful and healing waters. But instead of this simple, humane and economical course, the voice of mercy seems to have been suddenly stifled, and the government, straightway, determined to pursue this unfortunate and long-suffering people as public enemies, because they have done innocently and ignorantly what the people of more than two hundred towns and cities have done elsewhere—settled upon the public land and built a city there.

Since this judgment was pronounced that rendered 5000 citizens of this government houseless and homeless, every change that has been made, and every act of the government professedly for their relief, has rendered their condition, confessedly bad, still worse. The first act was to appoint a receiver to go and dispossess the peo-

ple of their houses, seize them, and exact and collect enormous rents. More than $40,000 was extorted by the receiver from these afflicted people as rent for their own property and houses in one year. There is not a precedent for such action as this in the whole history of our government; and it is to be hoped that this will stand as a humiliating warning rather than a precedent for future guidance.

In 1870, Salt Lake City, with 15,000 inhabitants, previously brought under subjection to the government by the army of the United States, at a cost of many millions of dollars, was found to be upon the public lands of the government. No receiver was asked for to go and seize Salt Lake City. On the contrary, the inhabitants were permitted to enter their town site of 5730.45 acres at $1.25 per acre. (Sec. 2390 Rev. Stat.) The City of Denver was discovered in 1865 to be on public land held for "*future disposal.*" It was not seized by a receiver, nor sold at auction, but allowed to enter its site of 960 acres at the same minimum rate. (Act May 28, 1864, 13 Stat., 94.) Leadville, a city of more than 20,000 inhabitants, stands today on public land reserved from sale. No one thinks of sending a receiver to seize it. Virginia City, Gold Hill, Petaluma, Le Grand, Baker City and Sparta, and two hundred other towns and cities, have been built upon the public land "*held for future disposal,*" and all allowed to peaceably and quietly enter their sites at the minimum rate fixed by law.

Your committee are at a loss to know why Hot Springs should have been singled out as an exception to the general rule? Why the occupants should have been dispossessed of their homes and required to pay rents for the houses which their own toil and sweat had reared? Why they were not allowed to enter even half so much land as a city site as the general law allows to other towns and cities? And, finally, why they should be charged thirty five times as much for their lots as the inhabitants of other towns and cities are required to pay?

The act entitled "An act in relation to the Hot Springs Reservation in the State of Arkansas," approved March 3, 1877, removed the receiver and delivered what he had left of the city and substance of the people over to the tender mercies of three commissioners clothed with extraordinary powers. They were empowered to lay off and set apart a permanent reservation; to lay out the City of Hot Springs into squares, blocks, lots, avenues, streets and alleys; to hear proof offered by claimants and occupants of said lands, and to determine the right of each claimant and occupant to purchase the same, or any portion thereof; to condemn and remove or cause to be removed all buildings or obstructions upon the reservation necessary, in their judgment, to be removed; to straighten and widen streets and alleys in said town; to lay off additional streets, alleys and roads, and for that purpose to condemn any and all buildings that they may deem it necessary to condemn and cause to be removed; to appraise all buildings and obstructions so con-

demned, and issue a certificate thereof; and, finally, to appraise and value the lots and lands by them awarded to claimants as well as that not awarded. For two years these commissioners have sat in judgment, with this distracted people arraigned and upon trial before them.

The entire amount of land laid off into squares, blocks and lots, as a town, is 1270 acres. Of this they have awarded to claimants 699.81 acres. Upon this 699.81 acres so awarded to individuals they have fixed a valuation of near $250,000, to be paid by the claimants to the government.

The report of these commissioners is accompanied by affidavits containing charges of fraud and corruption against the chief clerk of the commission and others, and gravely questioning the fairness and justice of the awards made. Memorials have also been received from the entire population, praying to be relieved from the onerous valuation placed upon the land awarded to claimants.

Your committee cannot better describe the sad condition of this unhappy people than by employing the language of their own memorial, as follows:

"And who are the people of Hot Springs that have been thus singled out, as it were, for spoliation and oppression? They are a population of 5700 souls, as shown by ballot, and under the general statutes already quoted would be entitled to the 2560 acres of land for their town site. They are mostly native-born citizens, representing nearly all the States of the American Union. A very large proportion have been driven here by stress of broken health, so often attended by broken fortunes. They have in many cases been relieved of their pains but not of their poverty. Perhaps not twenty persons of all the nine hundred claimants, from whom over $200,000 are to be taken by assessments, could raise $1000 by pawning all their worldly goods outside of their Hot Springs homes. They live here seeking health, but not making wealth. Quite recently a government receiver came here and took away over $45,000 for the rent of the very houses the people themselves had built. Later, a conflagration nearly destroyed the whole town. Still later a pestilence that scourged another part of the South for two seasons destroyed the only profitable business conducted at Hot Springs by reason of the quarantine enforced. Yet this unhappy people, poor to start with, and paying originally in most cases full prices for their homes to parties who supposed they had a right to sell, exhausted by lawsuits, trying to maintain their doubtful rights, crushed at last in spirit by losing all through a decision of the Supreme Court, impoverished next by heavy rents collected by a "paternal" government, for having innocently settled upon and improved the public property, and then wasted by fire and pestilence—this people, seemingly forgotten of God and abandoned of men, are recognized as offering, in the judgment of the Hot Springs commissioners, a bonanza of cash assessments to replenish the already swollen coffers

of the national treasury! Surely there is enough in this spectacle to excite the pity of mankind.

"But notwithstanding the hardships of their lot, and the harshness of their usage, your memorialists claim that through all the years of their residence at Hot Springs they have, to the utmost of their scanty means, done a Christian duty by the friendless and afflicted poor of all the States that have been perpetually thrust upon their charity. They have fed them at their doors, given them raiment, cared for them as well as possible when dying, and buried them decently when dead. No community in the United States, for its numbers, has been so sorely taxed to keep up a free hospital for the invalid paupers of all the States, and none more richly deserves at the present moment, in their appeal to Congress, the sympathy and support of all Christian societies and the benevolent hearts of the entire nation.

"The citizens of Hot Springs ask simple justice and equal rights under the law. They ask that the heavy assessment on their town be remitted, and that they be placed on a footing of all other towns established on government lands by recent public law."

They might fairly and justly ask more—they could not ask less; and your committee are unanimously of the opinion that their reasonable request should be granted, and the assessment upon their lots and lands reduced to the legal minimum.

The argument has been urged, that inasmuch as the acts and proceedings of the receiver and commissioners in charge of the Hot Springs affairs have involved, or may involve, the government in a considerable outlay of money, therefore such appraisement of the lands awarded to individuals should be made and levied thereon as will pay such probable expenditure. The committee are of opinion that the rents heretofore covered into the treasury, coupled with the proceeds of the public sale of those lands not awarded to any one, and of the entrance price of the awarded lands, as fixed in this act, will fully meet such expenditure as now appears probable. But whether this be true or not, your committee fail to see the fairness or justice of taxing these people with the extraordinary expense of an unnecessary, if not improper, proceeding on the part of the government, and over which they had no control.

The settlement of titles at Hot Springs at the earliest period practicable is deemed of the utmost importance to the growth and prosperity of the town, in the building up of which, so as to furnish ample and needful accommodations to the visiting sick, every portion of the country is interested. The Congress of the United States for this reason provided that the awards of the right of entry by the commissioners should be final. The Secretary of the Interior in transmitting to Congress the final report of the commissioners transmits "also a copy of a communication filed with the commissioners on the 10th of December, 1879, and letter from the chairman transmitting the same," and adds:

"The communication referred to above contains certain charges against the chief clerk of the commission, and questions the fairness of the awards made in several cases. As the department has not the power to compel the attendance of witnesses or the production of papers, nor the means at its disposal to conduct an investigation into the charges made, I have deemed it my duty to lay the matter before your honorable body for such action as may be judged advisable."

The original act of course contemplated fairness in making the awards, and if, in point of fact, they were not so made, some remedy ought to obtain. Without investigating or expressing any opinion as to whether or not there was unfairness in making the awards, we say the bill presented provides means for such investigation in the few cases in which it may be charged, if the charges shall be sustained upon a primary hearing, as upon applications for injunctions. It provides that a revision may be had in equity of awards, the fairness of which may be questioned on account of fraud, gross error, or mistake only, and the judge to whom application is to be made for a suspension of entries under the awards so charged to be fraudulent, grossly erroneous, or made by mistake, must find that a *prima facie* case is made for equitable intervention for such causes, after full opportunity has been given the adverse party to controvert the allegations and proofs of the complainant, before a suspension can be ordered, or the complainant be entitled to a further and final hearing. A very limited time is granted for such applications for equitable intervention, and all orders suspending entries, should any be made, are required to be made prior to the opening of the land office at Little Rock for entries.

These provisions will certainly prevent frivolous litigation. Should cases of fraud or mistake exist, they surely ought to be corrected; and if cases of gross error such as call for relief in equity exist, relief ought not to be denied, unless the public good imperiously demands a denial. The number of cases decided by the commission, and hurriedly as they must have been, makes it probable that error may have been committed in a few instances, which the commission itself, were it in existence, upon a rehearing, with ample time to consider, would pronounce gross. It is believed the bill is so guarded that no one can gain a standing in court whose grievances are not meritorious, and that its provisions are ample for speedy relief. It is further believed that the cases litigated under its provisions, if any, will be few in number, and for that reason not retard materially the growth and prosperity of the town.

Your committee unanimously concur in recommending the passage of the substitute herewith submitted.

APPENDIX "C."

46th CONGRESS, 2d Session.

H. R. 4244.
[Report No. 309.]

IN THE SENATE OF THE UNITED STATES,

FEBRUARY 12, 1880.

Read twice and referred to the Committee on Public Lands.

FEBRUARY 27, 1880.

Reported by Mr. WALKER with an amendment, viz.: Strike out all after the enacting clause and insert the part printed in *italics*.

AN ACT

For the establishment of titles in Hot Springs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the Secretary of the Interior, within ten days after the passage of this act, to transmit to the United States land office at Little Rock, Arkansas, the final report of the commissioners appointed under an act approved March third, eighteen hundred and seventy-seven, entitled "An act in relation to the Hot Springs Reservation in the State of Arkansas, together with the survey and map made by said commissioners, and accompanying their said report, which report and map show the award of titles to lands made by the commissioners under the provisions of said act; and shall instruct the United States land officers at Little Rock to allow the lots and lands awarded to individuals or associations on the Hot Springs Reservation to be entered as hereinafter provided, and shall cause patents of the usual form used in the sale of public lands to be issued therefor except in cases hereinafter to be specified; and it shall be the duty of the land officers at Little Rock to give thirty days' notice

in the Little Rock and Hot Springs newspapers of the time when said lands will be subject to entry under the provisions of this act.

Sec. 2. That any persons, their heirs or legal representatives, in whose favor said commissioners, or the court to which appeals may be taken under the provisions of this act, shall have finally adjudicated, shall have the sole right to enter and pay for the amount of land the commissioners may have adjudged them to be entitled to purchase, at any time within twelve months next after the expiration of the thirty days' notice by the land officers required in the preceding section to be given, by paying on every separate certificate of award covering a lot of one acre, or of any fraction of an acre, the sum of ten dollars; and on every separate certificate covering more than one acre but not over two acres, the sum of twenty dollars, and on every separate certificate covering more than two acres but not over three acres, the sum of thirty dollars; and so on at this rate, paying an additional ten dollars on every additional acre or fraction of an acre covered by any certificate.

Sec. 3. That a revision may be had in equity of the adjudications and award, of the right of entry of lots made by the commissioners, the correctness of which may be questioned on account of fraud, gross error, or mistake, and to that end jurisdiction is conferred upon the District Court of the United States for the Eastern District of Arkansas, and said court shall be deemed as open at all times for the exercise of the jurisdiction hereby conferred. Any and all persons feeling themselves aggrieved by any award or decision made by the commissioners for the causes aforesaid may apply to the judge of said court for an order suspending the entry or sale of the lot or lots to which they feel themselves entitled, not awarded them, and not included in the permanent reservation, at any time within twenty days after the first publication of the notice of the opening of the land office as aforesaid, by preparing their bill of complaint upon which the application is to be made, and delivering a copy thereof to and serving notice upon the adverse party of the intended application, five days prior to the date of such application, or in default of such delivery of a copy and notice, shall satisfy the court of their inability to do so. If, upon consideration of the bill and affidavit supporting it, in conjunction with the answer, should any be filed, and affidavits supporting it, or, in default of answer, upon the bill alone, the judge shall be of opinion that a case for equitable intervention on the grounds of fraud, gross error, or mistake as aforesaid is primarily made, he shall make an order suspending the entry or sale of the lot or lots involved in the suit, and cause

a copy thereof to be delivered to the land officers at Little Rock, Arkansas, prior to the opening of their offices for entries as herein provided, which order shall be obeyed until countermanded by the court or Secretary of the Interior. Parties not served with a copy of bill and notice as aforesaid shall be brought before the court by the usual process, when an order of suspension has been made as above provided, and may file their answer, with affidavits supporting it, and if, upon consideration thereof, together with the bill, the court is of opinion that a case for equitable intervention is not primarily made, the order suspending the entry shall be vacated, the cause dismissed, and the land officers served with a copy of the order vacating the suspension, after which entries or sales may be made as though such suspension had never been ordered.

Sec. 4. That all cases presented as aforesaid, in which a suspension of entries shall be ordered, as above provided, the court shall preceed to ascertain, try, and determine the better right as between the contestants, and to that end may admit exemplifications of the maps and plats of the land office at Little Rock, Arkansas, and the testimony taken before the commissioners; and it shall be the duty of the Secretary of the Interior to make, or cause to be made, such exemplifications, and to transmit the testimony so taken as aforesaid upon the proper demand of the court; and the court shall admit any other and further testimony before it essential to the proper determination of such causes, and may at all times make such rules as may be needful to secure costs and bring such causes to a speedy hearing and determination.

Sec. 5. Upon the determination of such causes the court shall certify its decision in each case to the Secretary of the Interior, and thereupon he shall issue the necessrry instructions to the land officers at Little Rock, Arkansas, to permit entries in conformity with the decision of the court, as provided by the second section of this act, at any time within twelve months next after the date of such instructions.

Sec. 6. That all claimants who failed in whole or in part to get an award for the lands they claimed, shall, although said lands may not have been awarded to others, and provided the same be not included in the permanent reservation, have the same right of revision, subject to the same conditions as prescribed in section three of this act; and if the judgment of the court be in their favor, it shall be the duty of the Secretary of the Interior to instruct the land officers at Little Rock to allow entries of said lands, in accordance with the judgment of the court, upon payment being made according to the rate established in section two of this act, at any time within twelve months after the date of the decision of the

court in the case: *Provided*, That this shall not apply to lots or lands set apart for school or church purposes.

Sec. 7. That those divisions of the Hot Springs Reservation, known as the mountainous districts, not divided by streets on the map made by the commissioners, but known and defined on the map and in the report of the commissioners as North Mountain, West Mountain, and Sugar Loaf Mountain, be, and the same are hereby, forever reserved from sale, and dedicated to public use as parks, to be known, with Hot Springs Mountain, as the permanent reservation.

Sec. 8. That whenever the town of Hot Springs shall procure elsewhere a suitable burying ground and shall cause the bodies now buried in the cemetery lot, within the limits of said town, to be decently removed and reinterred, the title to said cemetery lot shall vest in the corporation of said town to be held and used forever as a town or city park, and not otherwise.

Sec. 9. That the Secretary of the Interior is hereby authorized to designate as many as six lots from the unawarded grounds on the Hot Springs Reservation for the use of the common schools of the corporation of the town of Hot Springs, as sites for school houses, and the lots when so designated are hereby dedicated to the use of common schools, and shall be used, controlled, and managed by the common school officials of the district in which they may be located for such purposes only.

Sec. 10. That the streets, courts, and alleys, and other thoroughfares of the town of Hot Springs, as surveyed, opened, or established by the commissioners and represented on the map of said town, and not included in the permanent reservation be, and the same hereby are, ceded to the corporation of the town of Hot Springs.

Sec. 11. That that portion of the Hot Springs Reservation laid off into lots and blocks and forming part of the town site, but not awarded to any claimants, and not otherwise disposed of or reserved by this act, shall be sold at public auction to the highest bidder, at not less than its appraised value, from time to time, at the discretion of the Secretary of the Interior, and after public notice in the usual way in the sale of public lands; and the money arising from said sales, as well as the money paid in under section two of this act, shall be held as a special fund for the improvement and care of the permanent reservation at Hot Springs and of the Hot Springs Creek adjacent to and between the permanent reservations, and for the maintenance of free baths for the invalid poor of the United States, as provided by acts of Congress. *That it shall be the duty of the Secretary of the Interior, within ten days after the passage of this act, to transmit to*

the United States land office at Little Rock, Arkansas, the final report of the commissioners appointed under an act approved March third, eighteen hundred and seventy-seven, entitled "An act in relation to the Hot Springs Reservation in the State of Arkansas," together with the survey and map made by said commissioners, and accompanying their said report, which report and map show the award of titles to lands made by the commissioners under the provisions of said act; and shall instruct the United States land officers at Little Rock to allow the lots and lands awarded to individuals or associations on the Hot Springs Reservation to be entered as hereinafter provided, and shall cause patents of the usual form used in the sale of public lands to be issued therefor except in cases hereinafter to be specified; and it shall be the duty of the land officers at Little Rock to give thirty days' notice in the Little Rock and Hot Springs newspapers of the time when said lands will be subject to entry under the provisions of this act.

Sec. 2. That the right to have review of the decisions and adjudications in regard to claims by reason of improvements or occupancy made under sections five and six of the act of Congress of March third, eighteen hundred and seventy-seven, entitled "An act in relation to the Hot Springs Reservation, in the State of Arkansas," by the commissioners provided for by and appointed under that act is hereby recognized, and shall belong to as of right, and may be exercised by, any claimant or occupant of any tract or parcel of land forming part of the land specified in section three of said act, whose right to purchase such tract or parcel of land, or part of the same, has been either allowed or denied by the said commissioners, where his ground of complaint shall be an adverse decision as to his right to purchase.

Sec. 3. That any person deeming himself so aggrieved may exercise his right to have the action of the commissioners reviewed by filing a petition of complaint in the Court of Claims of the United States, containing a brief statement of his claim, as presented to the commissioners, and of the opposition, if any, made thereto, and of the action and adjudication of the commissioners thereon, and alleging that such action was erroneous and in denial of his rights in refusing to him the right to purchase the tract or parcel of land claimed by him, or part of it, and shall file as an exhibit therewith the original certificate, if any, granted to him. To which petition of complaint such papers as are therein referred to may be annexed as exhibits, and the prayer thereof shall be for a writ of certiorari, to be issued to the Secretary of the Interior of the United States, requiring him to send to and certify into the said court all the papers and evidences in

regard to the said claim filed in his office in obedience to section nine of the act aforesaid, or otherwise there, concerning such claim, and for citation to all parties named therein as having adverse interests, and to the Attorney-General of the United States, and that the matter be heard de novo, as to the facts and law, by the said court.

Sec. 4. That upon the filing of such petition of complaint, the writ of certiorari and citations shall be issued, being made returnable not more than sixty days after the date thereof, and the parties cited shall answer the petition within such time thereafter as by general rule for such cases the said court shall fix; and the cause shall then be heard de novo, upon the same evidence, and no other, as to the claimant's right to purchase, and in regard to adverse claims, upon which the commissioners decided.

Sec. 5. That every such petition of complaint must be filed within sixty days from and after the passage of this act, in default whereof all right of having review of any action of the said commissioners shall be forever barred; and until the expiration of said term of sixty days no patent shall be issued upon any certificate given and granted by the said commissioners, nor, after the expiration of said term, upon any certificate of right to purchase land as to which, in whole or in part, petition of complaint may have been filed, until final adjudication on such petition, and the making known such adjudication by the court to the Secretary of the Interior.

Sec. 6. That the adjudication and decision of the Court of Claims in every such case upon petition of complaint shall be in the last resort, final and absolute; and if in any respect the adjudication of the commissioners in any case shall be reversed, quashed, changed, altered, or modified, the court shall cause its clerk to issue to the party benefited thereby a new certificate, in lieu of that issued by the commissioners, and in the same form, upon which, if he purchase thereunder, patent shall issue to him; and the issuance of such certificate shall be a cancellation of the original; but if the adjudication of the commissioners shall in any case be at all points confirmed, upon certificate of such confirmation, given by the clerk, by order of the court, patent shall issue on the original certificate, if the party see fit to purchase thereunder.

Sec. 7. That like costs shall be allowed or taxed in cases in the Court of Claims under this act as are fixed for like services in other cases in the Court of Claims, to be taxed against one or the other party, in part or in whole, at the discretion of the said court, according to the rules that prevail in courts of equity; and persons filing petition of complaint shall at the same time file with the clerk of the court an undertaking to the United States with sureties to be approved

of by said clerk, conditioned for the payment of all costs which they may in that proceeding be by the court condemned to pay, with such sureties as shall be approved as sufficient by the clerk of the court; and the court may at any time compel payment of costs by the party condemned to pay them during the progress or at the end of the suit by execution or attachment.

Sec. 8. That in cases where the commissioners have not adjudged to any person the right to purchase and enter land, and the Court of Claims shall adjudge such right, said court shall determine the amount to be paid by the claimant, taking as a basis the reduction fixed by this act.

Sec. 9. That any person, his heirs or legal representatives, in whose favor said commissioners or the said Court of Claims shall have finally adjudicated, shall have the sole right to enter and pay for the amount of land the commissioners may have adjudged him entitled to purchase, within twelve months next after the expiration of the thirty days' notice by the land officers required in section one to be given, in cases where no proceedings are had in the said Court of Claims, and in cases where proceedings are had in said court within six months after the adjudication of said Court of Claims, and the issuance to such person of the certificate by the clerk of said court hereinafter provided for, by paying to the receiver of public moneys at the land office in Little Rock, Arkansas, fifty per centum of the assessed value of said land as placed thereon by said commissioners; and that such assessments be reduced to that extent; and that in any cases where any church or church association has been adjudged entitled to purchase land it may do so by paying five dollars per lot.

Sec. 10. That the certificates issued for condemned buildings by said commissioners be made receivable for the amounts named therin as so many dollars lawful money of the United States in the entry and purchase of the lands that may be sold in the Hot Springs Reservation; and that such certificates be assignable, and when assigned in the presence of two subscribing witnesses, or the execution of the assignment thereof shall have been acknowledged before a court of record or clerk thereof, shall vest in the assignee the right to make such purchase and entry therewith; and in case the amount of the certificate presented and received at such land office shall exceed that necessary to make the purchase and entry desired, there shall be executed by the register and receiver, and delivered to the person from whom the same is received, a certificate giving the number of the original, the date and amount thereof, the balance due such person thereon, and the certificate thus issued shall be assignable and receivable in like manner as the original.

Sec. 11. That those divisions of the Hot Springs Reservation, known as the mountainous districts, not divided by streets on the map made by the commissioners, but known and defined on the map and in the report of the commissioners as North Mountain, West Mountain, and Sugar Loaf Mountain, be, and the same are hereby, forever reserved from sale, and dedicated to the public use as parks, to be known, with Hot Springs Mountain, as the permanent reservation.

Sec 12. That whenever the town of Hot Springs shall procure elsewhere a suitable burying ground and shall cause the bodies now buried in the cemetery lot, within the limits of said town, to be decently removed and reinterred, the title to said cemetery lot shall vest in the corporation of said town, to be held and used forever as a town or city park, and not otherwise.

Sec. 13. That the Secretary of the Interior is hereby authorized to designate as many as six lots from the unawarded grounds on the Hot Springs Reservation for the use of the common schools of the corporatian of the town of Hot Springs, as sites for school-houses, and the lots when so designated are hereby dedicated to the use of common schools, and shall be used, controlled, and managed by the common school officials of the district in which they may be located for such purposes only.

Sec. 14. That the streets, courts and alleys, and other thoroughfares of the town of Hot Springs, as surveyed, opened, or established by the commissioners and represented on the map of said town, and not included in the permanent reservation, be, and the same are hereby, ceded to the corporation of the town of Hot Springs for public use.

Sec. 15 That that portion of the Hot Springs Reservation laid off into lots and blocks and forming part of the town site, bnt not awarded to any claimants, and not otherwise disposed of or reserved by this act, shall be sold at public auction to the highest bidder, at not less than its appraised value, to be made from time to time, at the discretion and under the direction of the Secretary of the Interior, and after public notice in the usual way in the sale of public lands; and the money arising from said sales, as well as any money paid in under section nine of this act, shall be held as a special fund for the improvement and care of the permanent reservation at Hot Springs and of the Hot Springs Creek adjacent to and between the permanent reservations, and for the maintenance of free baths for the invalid poor of the United States, as provided by acts of Congress.

Passed the House of Representatives February 10, 1880.

Attest: GEO. M. ADAMS, *Clerk.*

46TH CONGRESS, 2D SESSION. } H. R. 4244.

[Report No. 309.]

AN ACT

For the establishment of titles in Hot Springs and for other purposes.

1880—FEBRUARY 12.—Read twice, and referred to the Committee on Public Lands.

FEBRUARY 27.—Reported with an amendment.

APPENDIX "D."

46TH CONGRESS, 2d Session. | SENATE. | REPORT No. 309.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1880.—Ordered to be printed.

Mr. WALKER, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 4244.]

The Committee on Public Lands, to whom were referred the bill (H. R. 4244) for the establishment of titles in Hot Springs, and for other purposes, and also the letter of the Secretary of the Interior transmitting the report of the Hot Springs Commissioners, submit the following report:

The committee have been anxious, in arriving at a conclusion in this matter, to reach, as far as could be, a result that would be final. The litigation about the Hot Springs has been long, tedious, vexatious and costly. Above all things it seemed to the committee important to end this completely, if possible. But few complaints have been made to the findings of the commissioners under the act of March 3, 1877, as to the possessory right to lots; and the committee have thought it proper to give in these cases a review of the findings in some way that would not interfere at all with the disposal of the other lots. To this end they have provided for a *certiorari* in the Court of Claims to the Interior Department to bring up the records and papers of the commissioners there deposited for examination; and if, upon review, any of these findings are erroneous they are to be quashed; if not erroneous they are to be affirmed. The commissioners are out of office, and no appeal proper could well be provided for, if it were desirable to do so. The method adopted by the committee is plain, direct, inexpensive, and affords

a remedy to those who may be aggrieved by any findings by the commissioners as to the right of possession under the act referred to.

Many complaints have been made as to the assessments fixed upon property by the commissioners. Of course the committee could not examine each case and determine as to this matter. But they have examined it in general; and while they find the commissioners valued property at its market value and price, and they could adopt no other rule, yet, in the peculiar condition of the property there, it has been deemed advisable to recommend a reduction of these assessments in gross. It is perfectly plain the government never intended to make money out of the occupants on that land; in many cases it is the only estate of the occupants; they have held it under adverse circumstances for years, and their profits have been for the last few years only nominal. The gross assessments, $223,000, taken from that place, would well-nigh prostrate its business, and would in many cases break the occupants. The government has been at some expense to inaugurate and carry out a plan to dispose justly of that property, and this expense should very properly be paid by the property itself, and beyond reimbursing the government for its outlays in this behalf the committee think these assessments should not go. A reduction of 50 per cent. (one-half) upon the whole amount assessed will pay all these expenses and leave a surplus. And this reduction the committee think is fair and just, and have so provided in the bill.

The certificates issued by the commissioners for condemned property under the act of March 3, 1877, are of course to be paid at some time by the government, and this would require an appropriation and outlay of money. To avoid this, and to simplify the transaction, the committee think it better to take up these certificates as far as can be done in the payment of lots set apart to persons on preference right under that act, and they have so arranged it in the bill presented. In effect it is just the same to the government, and it is more direct and expeditious, in that it does not require payment in money from the owner, and then waiting by him for the government to take up his certificate with money.

With many conflicting interests at the Hot Springs, and almost as many different views urged and asserted before the committee, they have agreed on this plan, after long and anxious consideration, having before them all the time the equities of the people claiming property there under the act of March 3, 1877, and the rights of the government as well. With a wish to do justice between all, and end this matter without further trouble and delay, the committee report this bill, believing its passage will secure the desired object.

APPENDIX "E."

REPORT OF HOT SPRINGS COMMISSION.

OFFICE OF HOT SPRINGS COMMISSION,
HOT SPRINGS, ARK., December 11, 1879.

SIR: The commissioners appointed under the acts of Congress of 1877 and 1878, relative to the Hot Springs of Arkansas respectfully report that the claims for the right to purchase land have all been adjudicated, the records made up, the appraisements have been made, the surveys have been completed, and the unreserved land laid out as a town. Certificates for condemned buildings and for the right of the claimants to purchase have been made out, and but few remain to be delivered. The obstructions have been removed from the streets and the permanent reservation and the maps provided for have been prepared, and all the work contemplated by law has been completed. The following papers, documents, records, maps, and plats are filed with the Secretary of the Interior, to wit:

1st. All of the petitions filed with the commission for the right to purchase land and for condemned buildings, with the testimony offered by the claimants in the several claims and findings of the commission.

2d. A record of all the proceedings of the commission, which includes all the orders and findings made by the commission in the several claims; the commission holding it to be more advisable to put their findings in this form than in the shape of loose papers in each petition or claim. This record is made up in two large record books.

3d. A docket of all the petitions or claims filed, kept in the usual style of court dockets, furnishing a reference to the orders of the commission in each claim. These claims were docketed and numbered in the order of filing.

4th. A schedule, as provided by law, showing the name of each claimant and of each lot or parcel of land, the appraised value thereof, and numbers to correspond with such claim upon the map.

5th. Appraisement books, containing the valuation of each lot or tract of land in the reservation remaining to be sold and of the improvements thereon.

6th. A map of the entire reservation of four sections, as provided by law. This map is accompanied by maps of the several quarter sections in the reservation which show the alignment of the streets by distances, angles, and curves, the dimensions and areas of lots, the position of monuments, and other details.

The map of the entire reservation is on the scale of 200 feet to the inch, and the data could not all be put upon it for lack of space. The divisional maps are on a scale of 100 feet to the inch, which is entirely too large for a general map.

These accompanying maps are made a part of the principal map, and contain all the data required by law in addition to those on the principal map.

Reference is made to the report of Col. A. P. Robinson, the engineer of the commission, for more particular details upon this subject.

Much difficulty was experenced in making the proper surveys on account of irregularities in the surface and equally great irregularities in the lines of claims and existing streets, which the law required to be observed as far as possible. A more regular plan for both streets and lots might have been adopted but for the recognition in a large measure of the previously existing condition of the town.

7th. Maps in sections, showing the several claims as nearly as possible as originally made by the claimants. These claims were imperfectly described in the petitions, and the plats filed with them were inaccurately drawn in many instances, but with sufficient certainty to enable the commission by the aid of personal inspection, by surveys, and by testimony, to fix their true location upon the ground.

It was impossible to put these claims upon the general map.

The number of certificates issued for the right to purchase land is 647. These certificates have been issued from books provided for that purpose with stubs, upon which, in addition to the substance of the matter contained in the certificate, is a receipt from the claimant or his agent or attorney.

The number of certificates issued for condemned buildings is 172, and the amount covered by them is the sum of $74,696. These certificates were issued from books provided for the purpose, and with proper stubs showing the substance of the certificate, and containing a receipt of the person to whom issued or his agent or attorney; a list of these certificates is filed with this report.

The entire amount of land laid off into blocks and lots as a town is 1,270 acres; of these, 69.81 acres have been awarded to claimants.

A block (No. 114) containing 3.62 acres has been set apart as a site for the public building of Garland County.

The Hot Springs Mountain Reservation contains 264.93 acres. The remainder of the four sections consists of hills and mountains, and is almost entirely unfit for building and occupation, upon which streets could be constructed with great difficulty and expense. These mountains are largely covered with trees, being unoccupied, and are for the most part unclaimed. They have not been adjudicated to anyone, and are of that class of lands which remain under the law to be sold at public auction. They have been laid off into

large lots, not divided by streets, and should be reserved as public parks.

The appraisement has been made at what the commission believe to be considerably less than the actual value of the land. The mountain districts are laid off in large tracts, and have been appraised at such a rate as for the present to prevent their sale, with a view to their reservation as public parks by act of Congress.

The appropriations made for the use of the commission during the present year amount to $27.500; the expenditures. to $27.500; also $1808. 90-100 the condemned building fund.

The report of the disbursing officer, Albert O. Morgan, Esq., hereto appended, shows in detail the receipts and expenditures of the commission.

In the condemnation and removal of buildings, the commission had no funds with which to make removals and no place to which to remove them. The condemned buildings were for the most part put up for sale at public auction as a means of removal and sold to the highest bidder. These sales brought to the commission the sum of $1,811.77, and a detailed statement of them is recorded in the record books of the commission. A large portion of this sum has been expended in the employment of a party, under the direction of the engineer, in causing the removal of buildings, fences, and other obstructions, and determining for claimants their lines upon the streets.

The residents of the place have conformed to the orders of the commission by removing their fences and buildings not condemned from the streets and reservation without resistance or ill will. Immediately after the organization of the commission a public notice was given cautioning all persons against building, lest thier structures might be placed in the streets and public places which might be laid out.

The commission deem it advisable to recommend that an appropriation be made to pay off the certificates issued for condemned buildings, or, in case this cannot be done, that they may be made receivable at the land office at Little Rock in payment for lots to be sold in the Hot Springs Reservation. It is obvious that these certificates for condemned buildings are promises, on the part of the government, to pay the settlers for the losses caused by a total or partial destruction of their buildings of a highly equitable nature.

The commission further recommend that the proceeds of the sales of lots be appropriated by law to the improvement of the permanent reservation and the streets of the town adjoining at the earliest practicable day. These improvements are greatly needed, and, if judiciously made, will add greatly to the value of the property of the United States, as well as that of individuals in this place.

The commission also recommend a reservation by Congress from sale of all the land included in the blocks covering the mountains. These lands are not needed for any purpose but as public grounds or parks, covered by shade trees. Sites for school houses should

be reserved in different portions of the town. There are many unclaimed lots in convenient places which will furnish ample and convenient sites for school houses. It would not be improper also to set apart certain lots for sites for churches. The religious organizations here are very poor and feeble, and a little aid to them would be of lasting benefit to this community.

The Secretary of the Interior has already placed the care of the lands unclaimed in the hands of the superintendent of the reservation, and has given him instructions. We have only to add that nothing could be more important to the interests of the residents here and of the United States than to give the superintendent the fullest powers to prevent trespass and injury to lands and timber. It might not be improper to set apart a tract of land for the temporary residence, without charge, of certain poor persons who are unable to pay for boarding or baths. This might be done under direction of the superintendent.

We also recommend that photolithographic copies of the maps be made for the use of the land office at Little Rock and of the residents of Hot Springs.

Situated upon Valley street, and upon the Hot Springs Mountain Reservation, there was a large number of houses which had been condemned in a general order on June 30, 1877. This order was practically annulled by the subsequent action of the commission, they having decided that a special condemnation should be had under each petition. Upon the 5th day of March, 1878, a fire destroyed these buildings in a single night.

All these buildings were subject to condemnation and removal. Testimony had been taken as to their ownership and value prior to their destruction, which is preserved with the petitions on file.

These buildings were not specially condemned on account of the constant occupation of the commission in taking testimony before and up to the time of the fire.

Had these buildings remained, they would have been condemned and certificates of their value issued; but being burned, the commission held it not to be within their power to issue certificates for them.

Our action in these cases is a matter of record, wherein it appears that the claims for the value of these buildings were rejected for the sole reason that they were burned.

We invite the attention of the Secretary of the Interior to the testimony and the record in these cases, and we recommend that suitable legislation be had, based thereon, giving to the sufferers by the fire, who owned these buildings, some compensation or other proper relief in the premises.

Respectfully,

AARON H. CRAGIN,
JOHN COBURN,
M. L. STEARNS.

Hon. CARL SCHURZ,
Secretary of the Interior.

ENGINEER'S OFFICE, HOT SPRINGS COMMISSION,
December 11, 1879.

Hons. A. H. Cragin, John Coburn, M. L. Stearns, Commissioners:

GENTLEMEN: I have the honer to report to you the completion of the surveys of this reservation, and to submit to you the accompanying plans:

First. A general plan, on a scale of 200 feet to 1 inch, showing the laying out of the streets, avenues, alleys, blocks and lots. The blocks are numbered from No. 1 to 194, inclusive, and the lots are numbered separately in each block.

Second. A series of sixteen divisional plans, on a scale of 100 feet to 1 inch, each plan representing one-sixteenth part of the reservation. These divisions are distinguished by letters, and are indicated on the general plan by corresponding letters and boundaries. Upon these are shewn all the dimensions of streets, avenues, alleys, blocks, and lots, all curves and angles, the position of all monuments, etc., it being impracticable to delineate all the necessary detail upon the general plan.

The lots not awarded to claimants are distinguished by being colored, except the mountain blocks deemed impracticable for streets and blocks. These are left uncolored, as are also the lots granted to claimants.

Third. A series of sixteen divisional plans, on the same scale, and lettered to correspond with the previous series, exhibiting the various claims filed with the commission, being in exact accordance with the plans and descriptions of the claimants, and laid down as nearly as possible in the position indicated by them. They are of an infinite variety of shapes and sizes, often several covering the same ground, and, where not covering it *in toto*, overlapping and conflicting. Dividing lines, about which, in fact, there were no conflicts between adjacent claimants, were described by different courses and distances. Some of the claims had no courses described. Many, where there was an affectation of precision, described impossible pieces. Nearly all were bounded by their neighbors, and these in their turn by theirs, and few had any initial point by which it could be determined in what part of a division they were situated. A majority of them began at a corner of the piece described, and ended at the place of beginning. As far as possible these conflicting lines and vague and incorrect claims have been adjusted by surveys during the past summer, having reference to fences, buildings, and other evidences of improvement. The adjustment of these claims has been a most difficult and vexatious task, and has consumed more time of the engineering force than all the rest of their duties.

This reservation, although nominally two miles square by sectional numbers, contains but 2529.10 acres. From the northeast to the southwest it is divided by a range of precipitous mountains known

as the North Mountain, and Hot Springs Mountain in the northeast portion, and as West Mountain in the southwest portion. This range is divided near the center of the reservation by a deep gorge, through which run the waters of the Hot Springs Creek. The northwest corner of the reservation is occupied by Sugar-Loaf Mountain. All the area between the last-named and the range before described, and all the available area south of this range to the south line of the reservation, has been laid out in streets, avenues, blocks and lots. The gorge between the mountains before referred to is the only possible thoroughfare between these two sections.

All the avenues and streets have been laid out with reference to the topography of the site, and but a few present any long, straight lines, but the result is a system which can be graded and embellished at a comparatively small cost, while a more regular plan regardless of topography is unfitted for the site, and would have entailed an expense which would preclude any great improvement for years.

It has been deemed an important element in the plan that the two main water channels of the reserve, viz.: Hot Springs Creek and Gum Spring Creek, should be so absorbed by the streets as to be always under the control of the government or of the municipal authorities, in order to prevent their defilement. Even with the present population, there are times when during the dry summer months they become mere open sewers through the center of the town, offensive in the highest degree and detrimental to health.

A considerable portion of the city south of the mountains being more particularly a business district, that part, with the exception of Grand and Central avenues, has been laid out with right lines and angles, while that portion north of the mountain, being rural in its character, and more particularly calculated for residences, has been generally laid out with curves, not by any fixed design, but governed entirely by its topography, thus admitting of improvement and embellishment at a minimum of cost, without at all impairing its beauty when settled and occupied.

The lines shown in the general plan upon the mountain blocks are simply designed to suggest the location of possible carriage roads which may be constructed for drives at some future day, and those marked "Canyon street" and "Mountain street," extending from Central avenue to the northeast end of the summit of West Mountain, although not practicable as streets, have been laid down as bridle roads, or as lines on either of which an inclined railway elevator for attaining the top of the mountain may be constructed.

All corners, angles, and points of curves, have been defined by iron monuments, of which 1050 have been used. At all the crossings of the division lines, and at all the intersections of these lines with the exterior lines of the reservation and with main avenues, as well as at all the angles of the line inclosing the permanent reserve, granite monuments have been placed, on which are inscribed letters and figures indicating the lines they define. Ninety of these have

been used. There are in the aggregate, 49.96 linear miles of streets, avenues and alleys, of various widths, as follows:

	Feet.
150 feet in width	450
132 feet in width	3,089
125 feet in width	20,769
100 feet in width	685
85 feet in width	785
80 feet in width	7,953
75 feet in width	400
70 feet in width	26,510
66 feet in width	1,240
62 feet in width	1,045
60 feet in width	53,245
52 feet in width	200
50 feet in width	60,372
40 feet in width	55,709
30 feet in width	13,018
Alleys under 30 feet	13,832
Hot Springs Railroad	4,510
Total area	263,818

The total number of lots laid out in blocks is 196. The number of lots awarded to individuals is:

	Acres.
1,435, containing	699.81
Lots not awarded, 584	570.20
Area of streets and alleys	358.37
Permanent reserve	264.93
North Mountain	224 74
Sugar-Loaf Mountain	129.02
West Mountain	281.94
Total area	2,529.10

It is to be regretted that the provisions of the law creating this commission were such as in your judgment to compel you to adopt a lot system, adhering, with all possible strictness, to the lines of claimants. This has, in many cases, produced an irregularity which is objectionable, but under your construction of the law it is unavoidable. Where claim lines did not prevent, a system as regular as the shape of the blocks would permit has been adopted.

I cannot close this report without referring to the zeal and ability with which I have been sustained by my principal assistants, Mr. Charles B. Fisher and Mr. Samuel Hamblin.

I am, your most obedient servant,

A. P. Robinson,
Chief Engineer.

NEW YORK, *December 30, 1879.*

Hon. C. Schurz, Secretary of the Interior.

DEAR SIR: I inclose herewith a statement of John J. Sumpter and others, presented to the Hot Springs Commission on the 10th instant. When this communication was received, the commission was very busily engaged in preparing their report, maps, schedule, appraisals, findings and other matters for transmittal to your department, and in preparing and issuing certificates and in doing other detail work. The commission decided that this was not a paper to be filed with the testimony in the Sumpter claim, but rather to be presented to the Interior Department as a miscellaneous paper.

Our first idea was to investigate the allegations in this statement in relation to our clerk; but after fully estimating the work of the commission that remained to be done, I found it was absolutely impossible to do this and finish our work. Such an investigation in the then condition of our work, and the limited time for its completion, involved a failure to perform the duties of the commission as required by law. It was only by the greatest exertions, and the employment of extra force and by working Sunday and nights, that we were able to complete the work by midnight on the last day of our term, December 15, 1879.

The circumstances in relation to the presentation of this statement are peculiar. After the decision in the Sumpter claim John J. Sumpter made great efforts to have the case reopened, and to have that part of decision in the Gaines claim, awarding said Gaines certain lots that were also embraced in the Sumpter claim, reversed, and to have the same awarded to the Sumpters. He intimated to me more than once that if this was not done, and his part of their claim allowed them, he should have his attorney prepare a statement which would embarrass the commission; that he did not wish to do this, and would not do it if the decision could be changed and they allowed the lots in question. He said he was desperate, and was bound to attempt, by any means in his power, to gain what he considered his right. When he finally presented this statement to the commission, he remarked that he had no charges to make against the commission, and that if their claim was allowed he wanted the privilege of withdrawing the statement.

In making the decisions in the Sumpter and the Gaines claims, I was governed by what I considered the law and evidence in the cases, and had no knowledge of the matters and things alleged in said statement; and the other members of the board, I have no doubt, had no knowledge thereof.

Respectfully yours,

A. H. CRAGIN.

THE UNITED STATES OF AMERICA,
Hot Springs, Ark., December 10, 1879.

In the matter of the claim of Elizabeth Sumpter, William Sumpter and John J. Sumpter, numbered 737, consolidated with the claim of Wm. H. Gaines and Maria Gaines, numbered 784; before the Hot Springs commissioners

Now comes Elizabeth Sumpter, William Sumpter and John J. Sumpter, the above petitioners, and state that lots numbered 5, 6, 7, 8, 9, 11, 12, 13, 14, 15 and 16, in block numbered 86, as mapped out, platted and laid off by the Hot Springs commissioners, are situated in the original Hot Springs Reservation.

That in the year 1844 James Sumpter, husband of petitioner Elizabeth, and father of petitioners William and John J. Sumpter, purchased the possession of the land embracing said lots from one Wright, who had improvements on, and an occupancy of, the same. That he thereafter until his death, in September, 1861, possessed and occupied them in good faith, making other valuable improvements. That after his death petitioner Elizabeth and her children occupied them until July, 1864, when, all of their improvements being destroyed by fire, and said property being situated between the raiding or scouting parties of the Federal and Confederate armies, she abandoned it temporarily, but with a view of returning and occupying it so soon as these difficulties should cease. That in 1865 the said petitioners returned, in pursuance of their intent, which had never been abandoned, and occupied said lots, inclosing them and using them as the front yard of houses built by them for use in the immediate rear thereof, and passing over and through them constantly and daily to and from their houses, one of which was a hotel, to the only public road or street then in the Hot Springs Valley, upon which their said houses fronted. That they continued so to occupy them until and after the 24th of April, 1876, and until after the government receiver, A. O. Morgan, took possession of and rented out a portion thereof, the said petitioners having first applied to and rented the same from him and paid him one thousand dollars ($1000) therefor, together with other lands. That said Morgan, in violation of the tenancy of said petitioners, and after he had received said money as rent therefor, rented four of said lots to other persons. That they, the petitioners, on the 24th day of April, 1876, and prior thereto, had improvements upon all of said lots, within the spirit and meaning of the act of Congress entitled "An act in relation to the Hot Springs Reservation," of the State of Arkansas, approved March 3, 1877, and were *bona fide* occupants of the same; and that no other person, save James Sumpter's vendors, ever had any improvements upon, or occupancy of, said lots, within the sense of said act, or otherwise. That in October, 1877, the said petitioners, Elizabeth, William and John J. Sumpter, under the provisions of said act, filed their said petition

737, accompanied with a map, before the said Hot Springs commission, wherein they described, with other land claimed by them, the said lots, and prayed of said commission a right to purchase them from the United States, by reason of improvement and occupancy, under and within the provision of said act. That shortly thereafter Wm. H. Gaines, and Maria Gaines his wife, who, as the testimony shows, never invested a dollar in the way of improvement upon said lots or any of them, filed their petition numbered 784, before said commissioners, wherein they prayed of said commission an award to them of the right to purchase the land embraced in said lots, together with a very large quantity of land situated in the original reservation of Hot Springs, Ark., embracing a number of minor claims, and of other lots claimed by said Sumpters. That the only foundation of said claim by said Gaines and wife was a fraudulent "certificate of entry," which was procured by said Gaines in favor of the heirs of Ludovicus Belding, and which was introduced in evidence, was obtained by foul practices and upon the representation of said Gaines to the Secretary of the Interior that he would never demand a patent upon said certificate. That after the filing of said petitions said claims were, by order of said commission, consolidated. That the evidence in support of them, respectively, was thereafter introduced, and showed, in support of the petition of the said Sumpters, their use of said lots and the character of their improvements thereon, together with their long occupancy thereof. That the evidence in behalf of said Gaines and wife showed the said certificate of entry to have been obtained upon the representations aforesaid; a suit by him and the Belding heirs, based upon said "certificate of entry," against said James Sumpter, and a compromise of said suit upon an agreement between him and the said Sumpter upon a mere nominal rent until the courts should pass upon the validity of said certificate, after which, if said certificate should be held invalid, the right of possession should remain in said Sumpter, otherwise in said Gaines and Belding.

Petitioners, Elizabeth, William and John J. Sumpter, say that the evidence on file in said cases shows the above facts to be conclusively true, and shows further, that in 1866, after the said petitioners, Elizabeth, William and John J. Sumpter, had retaken the occupancy and use of said lots, and inclosed the same, the said Gaines and Beldings instituted in the Hot Springs Circuit Court actions of unlawful detainer and forcible entry and unlawful detainer against said Elizabeth and William Sumpter, wherein they charged and acknowledged the possession of said lots and land to be in said Elizabeth and William; that said suits were, by agreement between the attorney of said Gaines and Beldings, Judge Watkins, and the attorney of said Elizabeth and William, A. H. Garland, present United States senator from the State of Arkansas continued with consent of the respective parties, until such time as the validity of said certificate should be finally passed upon, when, if the same should be held

valid, judgment should go in favor of said Gaines and Beldings, otherwise in favor of said Elizabeth and William Sumpter, in whom the right of possession and occupancy was as between the parties to continue; the said suits have been continued from that date and never tried, and that said Sumpters have ever since been the occupants of said lots.

And petitioners further say, that after all the evidence in said cases was introduced, and after the year in which the commissioners' work was to have been done had passed, William Nelson, an officer with the rank of Major in the United States army, retired, and residing in Hot Springs, Arkansas, approached petitioners John J. and William, and told them that A. O. Morgan was to act as clerk to said commissioners upon their return to resume their duties, and that the object of his appointment was a secret, and cautious representation of their interest and motives touching their official action, in which it would not be safe for them to act openly; and further stated that if the Sumpters would convey one hundred front feet of the front part of their claim the whole of their claim would be allowed. That he had letters from said Morgan authorizing him to make such arrangements, and assuring him that the action of said commission would in that behalf be controlled by him, the said Morgan; that after some days of delay and negotiation the said Nelson agreed to accept fifty front feet of said claim, running back to the section line between sections 32 and 33, in township 2 south, of range 19 west. That said Sumpters agreed to give this and executed to said Nelson a deed therefor in his own name, the said Nelson telling them that he was acting in this matter under the instruction of said Morgan. That after said deed was executed the said Nelson told said Sumpter that said Morgan would be at Hot Springs in a few days, and that he was instructed to wait till his arrival; that upon the arrival of said Morgan said Nelson came to said Sumpters, told them that Morgan would do nothing for them unless they deeded to him one-half of their claim, and that he, Nelson, considering said demand unreasonable, had used harsh language toward the said Morgan in consequence thereof; in consequence of which they had fallen out, and that said Nelson assured the said Sumpters that he had no interest whatever in the matter, but merely desired to see them get their property on the best terms they could, knowing that they were entitled to the same, but that a portion thereof would be exacted from them as the condition of granting the prayer of their petition. That said Nelson told the Sumpters that Morgan's demand for one-half of the land included in their claim was unreasonable, and they then refused to give the same.

That afterwards, during the summer of 1879, ex-United States Senator Powell Clayton came to Hot Springs at different times, and at different times asked petitioner John J. Sumpter if petitioners had arranged their affairs in relation to their claim before the commissioners, and advised him to hold no further conversation with Major

Nelson; told him that petitioners would have to give up one-half of the front portion of their claim embracing said lots to get the balance. That said John J. offered said Clayton one-third thereof. Said Clayton refused the offer, saying that said Gaines would do better than that. That afterwards said Clayton told John J. to go to said Morgan and negotiate with him, but not to talk any more with said Nelson. That at one of these numerous conversations, said Clayton offered to pay the government for the whole of the front portion of said claim, and insure the award to said Sumpters of the whole of their claim if they would convey to him one-half of said front portion; that said Clayton during these conversations spoke of a strip of ground occupied with houses lying between Central avenue and Hot Springs Creek, which had been condemned by the said commissioners, or so published, and the said Clayton then told said petitioner John J. that said condemnation would be reversed and the right to purchase the land awarded to the occupants thereof, if trades could be made, and requested and authorized John J. to purchase for him all claims of occupants upon said strip that he could for fifteen dollars per front foot. This conversation occurred during the summer of 1879; that there were different conversations between said John J. and said Clayton in relation to this matter in and during said summer. That notice was given to the occupants of said strip of ground "to remove their buildings off the same" by the 31st day of October, 1879. That said order and decision was thereafter reversed, but not until after many sales and transfers of property thereon had been made, the said John J., however, not having made any purchases, feeling that the same would be wrong. That upon and after the advice of the said Clayton, the said John J. had divers conversations with the said A. O. Morgan, in reference to the claim of said Sumpters, and the amount thereof which they would have to sacrifice to get the same allowed.

That said Morgan demanded of the petitioners a conveyance of one-half of the front portion of said claim, embracing said lots, and offered to insure to them an award by said commission of the right to purchase the same if said conveyance was executed; that he finally offered to pay the government for the whole front portion of said claim and insure an allowance of said claim by said commission if the petitioners would convey as aforesaid, and told said John J. that this was better than they would ever do again, and that the claim of said Sumpters was much stronger and much better supported by evidence than that of Gaines and wife, and he would rather trade with Sumpters than Gaines, but that said Gaines would give one-half as the consideration of the award. And the said Morgan further stated to said John J. that he had been present at the examination of the testimony by said commissioners when they were in the east, and that he knew what course they intended pursuing, and that the Sumpters would have to give up half of said front or lose the same; that said Major Nelson also repeatedly

during this time advised said John J. and William to make the best trade they could with said Morgan, assuring them that unless they did make such trade they would be wronged and their property taken from them; that said Sumpters, knowing that said Gaines had no claim within the spirit, letter or equity of said act, notwithstanding the statements of said Morgan, Clayton and Nelson, the last of whom they regarded as their friend, felt that said commission could not have the hardihood to deprive them of their rights, either for the benefit of said Gaines or themselves, under cover of said Gaines' claim, and although they were willing to give something, refused to surrender half of their rights, preferring rather to lose the whole.

That there being upon the front portion of said Sumpters claim, one lot, touching which there was a plausible controversy against them, and touching which the evidence was somewhat evenly balanced, they, the Sumpters, at the solicitation of said Morgan, and with a view, among other things, to test his powers to control said commission, and to ascertain definitely whether said commissioners, or a majority of them, recognized his contracts, made a conveyance in secret trust for the benefit of said Morgan or of said commissioners, or of both Morgan and said commissioners, to a third party —whose name, with unquestioned proof thereof, is ready to be tendered—of the north half of said lot, and that they, thereupon, found that his contracts were recognized, for the said commission awarded said lot to petitioners Sumpter.

And petitioners say that William H. Gaines and wife employed M. W. Benjamin and W. W. Wilshire to present their said claim to said commission, and that after the appointment of the said Morgan as clerk to said commission with the ultimate view of subserving their ends as aforesaid, the said Gaines in the month of June, 1879, after telling certain persons mixed up in the trafficking of said Morgan, that he was going to Little Rock and settle if possible with his said attorneys on a money basis and get rid of them so, that he might have his land and claim in a condition to deal therewith for the use of said Morgan and the commission, and thereby secure a favorable consideration of his said claim, went to Little Rock, settled with said attorneys at $6500, procured from them a relinquishment and rescission of the conveyance and agreement by which they were to have and receive one-half of the land that should be awarded to said Gaines and wife upon said petition; that the said Gaines thereafter returned and disposed of portions of the land claimed by him in accordance with said intent so expressed.

That the heirs of John C. Hale, being pressed through the same channel to make a conveyance of a large portion of their claim, did so, and that the same was allowed. That the land authorized by said act to be located and set apart to Garland County for a county seat, was first located by the commission on block number 111 as mapped and platted by said commission, where it was extremely injurious to the property claimed by said Sumpters, and that there-

after, and before said location was made final, S. H. Still, a son-in-law of said Gaines and wife, one of the proprietors of the Arlington Hotel, approached W. J. Little, a son-in-law of petitioner Elizabeth, and brother-in-law to petitioners William and John J., and told him that if he would agree to give him $500 he would insure the removal of said location and a reversal of the decision of said commissioners in this behalf. That said Little agreed to pay said Still said sum if said removal was accomplished, and thereupon it was accomplished, and said county seat located back upon the mountain side, where it can never be of value to said county or any one else. That before this the Sumpters had petitioned, pleaded, requested, and used all the moneyed influence at their command without avail.

That in the claim of Mary K. Cayce the land claimed embraced thirty lots as laid out by the commission; all of said land had been inclosed for a period of ten years, and the greater portion of it in cultivation, and had upon it a residence and out buildings; and that said Cayce is mother-in-law of petitioner, John J., who has the control and management of her claim; that said Clayton, when making his aforesaid demand, also demanded of said John J. a half interest in these lots, as the consideration of the allowance of said claim. The said Morgan also made the same demand, and offered to secure the award of this claim in full, and pay the government the price assessed upon the land, for said half interest (after the said John had refused to give said half interest outright) and told him that this was the best he would ever get, and that Cayce would get more in this way than any other; said John refusing to do this, the commission afterwards awarded to the said Cayce only fourteen of said lots; that, thereupon, said John J. agreed with said Morgan to give him one-half of all the lots, *except one*, that he would thereafter procure to be added to said award, and very soon thereafter six lots were added thereto by said commission. That the said Sumpters refused to convey the one-half interest of the front portion of their claim, and that, true to the prediction of Clayton, Morgan, and Nelson, the commission awarded to said Gaines the said lots numbered 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and 16, in block number 86, the same being decidedly the most valuable of said Sumpter's claim, and being one-half of the front thereof by admeasurement; that, thereupon, the said petitioner John J., learning of this went to see said commissioners severally and talked with them about the matter, but did not tell Commissioners Stearns and Coburn of the bargains and propositions offered him by said Morgan. Commissioner Coburn told said John that he was in favor of declaring said lots vacant, but that the award and decision was made by Commissioners Cragin and Stearns, and that as between said Sumpters and Gaines said Sumpters had the right, and Gaines never had any shadow of right; Commissioner Stearns told him that he was as a rule in favor of letting decision stand, but that inasmuch as the other

commissioners had opened cases and reversed decisions, he was willing that this case should be reopened. Commissioner Cragin told him that he was in favor of awarding all of said lots to the Sumpters, but had made a compromise decision, and would be glad to reopen the case and have all of said lots awarded to the Sumpters, feeling that they were entitled thereto; that prior to his calling upon said commissioners John J. saw said Morgan and told him that he was satisfied Morgan could have the property awarded as he pleased, and that he, Sumpter, would go, if the matter stood thus, and tell the commissioners of his proposition and doings; that he, Sumpter, would not be robbed in any such manner. Said Morgan replied that said Sumpter might go and tell said commissioners as soon as he pleased, saying, "I have told them all about it." That afterwards when the said John, in a subsequent conversation with said Cragin, in his, Cragin's, room, at the Arlington hotel, told him that he was dissatisfied and would if possible amend the proceeding of said commission by exposing, as far as he knew the actions, conduct, trading, and misdoings of the said Morgan, who claimed therein to represent the said commissioners. The said Cragin advised against it, saying, "Your interests are so great that you cannot afford to do so, as the property which has been awarded to the Sumpters is very valuable and will be imperiled thereby."

That when said Clayton was urging upon said John J. to give up half of said front portion of said claim, the said John told him that he had agreed to give up fifty feet thereof, whereupon said Clayton replied that this was too little, that it had to go through long division, and the shares would consequently be very small; and the petitioners Elizabeth, William, and John, state as a fact that there are many conveyances of the character above indicated made either directly to, or to persons named by said A. O. Morgan, and that the decisions have uniformly, so far as the same have fallen within their observation, been, either by accident or understanding (petitioners hardly think by accident), in accordance with the stipulations, statements, and interest of said Morgan.

I. And petitioners charge that the award of said lots to said Gaines and wife, by said commissioners, was influenced by fraud, as above indicated.

II. That said award is without evidence to support it and contrary to the letter and spirit of the law, and they state that they will not abide the same, but pray an appeal now from the decision of said commission in said consolidated claims number 737 and 784, awarding said lots to said Gaines and wife and pray a revision of the same upon the evidence taken before said commission and preserved on the files thereof, and further pray that the wrongs and

frauds herein charged and the connection of said commissioners therewith be investigated.

(Signed) JOHN J. SUMPTER,
(Signed) WM. SUMPTER,
(Signed) ELIZABETH SUMPTER.

John J. Sumpter states that he is one of the petitioners in the foregoing claim No. 737, and that he believes the foregoing statements to be true.

JOHN J. SUMPTER.

Sworn to before me this 10th day of December, 1879.

[NOTARIAL SEAL.] JOSEPH FRIEBIS, N. P.

A list of persons to whom certificates for condemned buildings were issued by the Hot Springs Commission in the year 1879, giving the numbers, names and amounts.

Certificate	NAME.	Number of Claim	Amount.
1	Martha Murphree	530	$250 00
2	Henry M. Rector (No 33)	668	600 00
3	Philip Ottenheimer and Daniel Ottenheimer	276	600 00
4	Emanuel Burgauer	517	900 00
5	Jeremiah C. Moores	602	35 00
6	William W. Clark	274	800 00
7	Henry M. Rector (No. 26)	668	100 00
8	Henry M. Rector (Nos. 24 and 25)	668	125 00
9	Henry M. Rector (No. 23)	668	200 00
10	John W. Clary	455	75 00
11	Henry M. Rector (No. 20)	668	400 00
12	George P. Gates and William Passmore	550	1,500 00
13	Albert L. Cuthbert	470	400 00
14	Hale heirs: Sarah Hale, Lorretta Hale, John P. Warren, John Boynton Hale (No. 43)	606	85 00
15	Robert G. Davies	390	350 00
16	George W. Lawrence	516	1,000 00
17	Mrs A. B. Whittaker	364	100 00
18	James H. Nichols, Jr	591	40 00
19	Matthew J. Smith	490	70 00
20	Emanuel Burgauer	38	125 00
21	Curnel S. Williamson and Albert B. Gaines	640	200 00
22	John M. Rice	611	150 00
23	Elias W. Rector, George W. Murphy and James B. Wood	880	300 00
24	Hermon Moscowitz	52	250 00
25	Dinah Averitt	40	75 00
26	Orlando A. Hebson	614	250 00
27	Jno. J. Sumpter, guardian of James King, Jr	834	60 00
29	Mary Rogers Rugg	855	275 00
30	Ephraim Terry	605	100 00
31	Oma Jester	321	100 00
32	James M. Rice	610	230 00
34	James M. Spence and George J. Summers	759	25 00
35	Susan Hunter	154	75 00
36	Elias Woolman	709	75 00
37	Martin P. Harrison	696	75 00
38	Lizzie Ward	359	60 00
39	James T. Mott	468	50 00
40	Alice McMichael	852	30 00
41	Edmund W. Rucker	816	150 00
42	Lavinia A. Squire	254	600 00
43	James H. Whitelsey	128	500 00
44	William H. Barry	445	250 00
45	James P. Wood	881	300 00
46	William F. Clyde	821	150 00
47	Thomas H. Lewis	320	175 00
48	Thomas Webber	587	200 00
49	Tempy Bryant	277	100 00
50	Mark C. Haney	534	85 00
51	Calvin Bagley	344	40 00
52	Sarah J. Cloyes	706	85 00
53	James M. Spence	552	250 00
54	Polly Cogburn and Pleasant Green		125 00
55	Isaac Graves	946	40 00
56	Sarah E. Walker	185	100 00
57	John B. Roe	224	50 00
58	Robert C. Jones	253	150 00
59	Christopher Hazen	510	166 00
60	Albert Donnelly	328	50 00
61	Amanda Sanders	758	25 00
62	Martha Patillo	381	90 00
63	Martha Seaborn	382	65 00
64	George W. Brantley	498	566 00
65	Charles Bryan	685	300 00
66	Af. M. E. Church (colored)	724	100 00
67	William K. Camp	588	25 00
68	James H. Adams	656	120 00
69	Mary Rogers	313	200 00

A list of persons to whom certificates for condemned buildings were issued by the Hot Springs Commission, etc.—Continued.

Certificate.	NAME.	Number of Claim.	Amount.
70	Wesley Steele, guardian of Wesley Smith	814	$25 00
71	John H. Scoggins and David D. Shipley	627	35 00
72	Lizzie Fitzhue	908	60 00
73	Samuel Davis	757	80 00
74	Edward Fitzgerald, Bishop of Little Rock	523	800 00
75	George Wesson	384	230 00
76	Michael Conley	181	688 66
77	Morris Moscowitz	95	110 00
78	Thomas Bass and Martha Bass	174	1,770 00
79	James M. Ballentine, executor, and Agnes Ballentine, executrix of David Ballentine, deceased	2	10,000 00
80	Jacob Kempner	753	380 00
81	Belinda T. Elliott	113	250 00
82	Mary Haley	934	200 00
83	Mattie O'Neal	939	200 00
84	James K. Lane	641	125 00
85	William W. Fowler, Sophia Fowler, Joseph B. Fowler, Robert F. Fowler, E. L. Fowler, heirs of Albert M. Fowler, deceased	492	80 00
86	Michael Conley	181	22 00
87	Algernon S. Garnett	159	100 00
88	Henry P. Smith	318	200 00
89	Henry M. Rector (No. 40)	636	300 00
90	Henry M. Rector	636	850 00
91	Walter A. Moore	512	435 00
92	William F. Hou ley	6	150 00
93	Jacob W. Parker	340	30 00
94	Thaddeus Taylor	279	160 00
95	William P. Walsh	761	400 00
86	Charles N. Rockafellow	117	300 00
97	George W. Barnes	247	100 00
98	James F. Smith	399	200 00
99	Hale Heirs; Sarah Hale, Loretta Hale, John P. Warren, John Boynton Hale	709	50 00
100	James B. McCaffrey	454	50 00
101	James Madison and Wesley Steele	95	125 00
102	Henry M. Rector (No. 7)	636	250 00
103	Thompson C. Pipkin	55	300 00
104	John F. Lowrey	477	45 00
105	Benjamin F. Bunch	616	20 00
106	Joseph O. Pool	199	750 00
107	Shade A. Sammons	452	80 00
108	John Armstrong	604	80 00
109	Patrick J. Ledwidge	395	1,000 00
110	George N. Johnson	812	40 00
111	Mary A. Thompson	93	600 00
112	Lillie Williams	580	15 00
113	Mary Steele	846	25 00
114	Trustees of the Roanoke Baptist Church (colored)	809	300 00
115	Emma Taylor	325	50 00
116	Samuel Smith	927	200 00
117	Lizzie Smith	107	40 00
118	Adam Roane	756	100 00
119	Calvin Davis	339	80 00
120	Rachael Chapman	729	25 00
121	Andrew Clay	547	100 00
122	Jacob Kempner	754	25 00
123	Edward Chambers	760	25 00
124	Aaron Johnson	774	65 00
125	Charles Wilson	776	65 00
126	George Wesson	384	150 00
127	John L. Scranage	239	150 00
128	William H. Gaines and Mariah Gaines	784	200 00
129	Fannie G. Williamson	673	265 00
130	George Clemson	315	25 00
131	William H. Gaines and Mariah Gaines	784	75 00
132	Algernon S. Garnett	1	225 00
133	John M. Huffman	751	300 00
134	William H. Gaines and Mariah Gaines	784	50 00
135	Elizabeth Sumpter, John J. Sumpter and William Sumpter	737	155 00
136	Mary Thompson	727	10 00
137	Matilda Lipscomb	303	85 00

A list of persons to whom certificates for condemned buildings were issued by the Hot Springs Commission—Concluded.

Certificate.	NAME.	Number of Claim.	Amount.
138	Peyton Grissam	225	$75 00
139	David H. Harris	9	120 00
140	Jemima Pope	389	50 00
141	Carrie Broadwell	460	150 00
142	George J. Summers	397	155 00
143	James M. Ballentine, executor, Agnes Balletine, executrix of the last will and testament of David Ballentine, deceased	2	800 00
144	John T. Baker	662	75 00
145	Peter Davis	366	50 00
146	Washington H. Leary	578	80 00
147	William J. Terry	30	120 00
148	John W. Smith	292	50 00
149	Thomas Haskins	650	40 00
150	George W. Mann	929	30 00
152	Charles Wilson	776	125 00
153	Frederick Dengler	259	30 00
154	Robert G. Davis, Elias W. Rector and Henry M. Rector, Jr	437	80 00
156	Henry M. Rctor (No. 31)	636	160 00
157	Henry M. Rector (Nos. 9, 13, 14, 15, 16, 18)	636	870 00
158	Hannah Alexander	316	75 00
159	Elihu B. Smith	152	600 00
160	Thomas J. Evans	482	60 00
161	Henry M. Rector (No. 19)	636	300 00
162	Samuel H. Stitt, De Witt C. Rugg and Samuel W. Fordyce	540	22,000 00
165	Henry M. Rector	668	6,000 00
167	Henry M. Rector	668	2,500 00
168	Michael C. O'Bryan	27	79 00
169	Michael C. O'Bryan	357	125 00
170	Mariah E. Payne	105	100 00
171	Laura McConihi	341	100 00
172	Joseph Morrison	537	100 00
173	Patsey Jones	479	50 00
174	Henry Battle	272	50 00
175	Kate McGrath	45	50 00
176	Alexander Peoples	146	50 00
177	Thomas M. Gibbs	416	130 00
178	Balsora Pryor, Carrie Pitman and Eugine Pitman	461	200 00
179	Clarissa Bella	13	200 00
			$74,586 00

Schedule.—Hot Springs Commission, 1879.

The following is a schedule of claimants and of lots and blocks in the Hot Springs Reservation, with the appraised value thereof, and with corresponding numbers of the same on the map made by the Hot Springs Commission.

AARON H. CRAGIN,
JOHN COBURN,
M. L. STEARN,
Commissioners.

December 11, 1879.

Schedule of Claimants and of Lots and Blocks in the Hot Springs Reservation.

Name.	Block.	Lot.	Appraisal.
	1	1	$ 45
	1	2	35
	1	3	70
George Eckerde	1	4	20
	1	5	35
	1	6	35
	1	7	25
	1	8	15
Thomas McGlaron and William Gable	2	1	35
Charles C. Coughman	2	2	35
do	2	3	45
do	2	4	45
do	2	5	35
Mahala Cotton	2	6	35
do	2	7	35
Charles C. Coughman	3	1	35
do	3	2	35
Fannie Knowles	3	3	35
do	3	4	35
do	3	5	40
do	3	6	40
do	3	7	40
do	3	8	40
do	3	9	40
Charles C. Coughman	3	10	45
do	3	11	45
Curnel S. Williamson and Albert B. Gaines	4	1	50
do	4	2	45
do	4	3	60
do	4	4	60
do	4	5	60
Robert L. Adams	4	6	70
Sarah Flowers	4	7	60
do	4	8	60
do	4	9	60
	4	10	60
Curnel S. Williamson and Albert B. Gaines	4	11	45
do	4	12	45
do	4	13	45
do	5	1	60
do	5	2	60
do	5	3	100
Charles G. Bush	5	4	105
John A. Wolfinger and N. J. Steben	5	5	$ 100
Robert L. Adams	5	6	50
Curnel S. Williamson and Albert B. Gaines	5	7	50
do	5	8	50
do	5	9	50
George Tanner and Greenlee Tanner	6	1	55
do	6	2	60
	6	3	60
Jesse L. Sanford	6	4	100
Sydney H. Taylor	6	5	45
John Nevill	6	6	20
George Dallas Bumpis	6	7	65
Elijah A. Shippey	6	8	105
do	6	9	85
do	6	10	65
	6	11	105
James M. Spence and George J. Summers	6	12	105
George Tanner and Greenlee Tanner	6	13	45
do	6	14	45
do	6	15	70
John Graham and John W. Hall	7	1	35
	7	2	75
Jerome Henderson	7	3	60
John D. Ware	7	4	60
James S. Bellamy	7	5	45
	7	7	70
Robert F. Parker	7	8	60
do	7	9	60
	7	10	85
	7	11	50
Charles C. Coughman	7	12	85
	7	13	45
	7	14	50
Robert F. Parker	7	15	45
do	7	16	45
	7	17	25
	7	18	25
	8	1	25
	8	2	25

Schedule of Claimants of Lots and Blocks, Etc.—Continued.

Name	Block.	Lot.	Appraisal.
	9	1	$ 20
	9	2	20
	9	3	35
	9	4	35
	10	1	45
	10	2	40
	10	3	40
	10	4	50
	10	5	50
Malinda M. Honsley and Rosa Loeb	10	6	35
	10	7	35
	10	8	35
	11	1	45
Ann Thrasher	11	2	35
do	11	3	45
do	11	4	60
do	11	5	85
	11	6	60
	11	7	60
	11	8	70
Martin P. Harrison	11	9	60
Ann Thrasher	11	10	35
Mary E. Linde	12	1	85
do	12	2	60
do	12	3	60
Arthur K. Taylor	12	4	65
Charles Matthews	12	5	35
Mary E. Linde	12	6	45
do	12	7	35
do	12	8	85
Harriet K. Ayres	13	1	35
do	13	2	35
do	13	3	35
Albert B. Aldrich	14	1	60
	14	2	100
	14	3	85
	14	4	120
	14	5	70
	14	6	50
	14	7	60
	14	8	50
	15	1	20
Albert B. Aldrich	15	2	45
	15	3	45
	15	4	45
	15	5	50
	16	1	45
	16	2	45
	16	3	50
	16	4	65
	16	5	65
	16	6	60
	16	7	45
	16	8	25
	17	1	65
	17	2	65
	17	3	60
Arthur K. Taylor	17	4	85
	17	5	50
	17	6	60
	17	7	85
	17	8	85
	17	9	85
	17	10	70
	17	11	70
Frederick Dengler	17	12	50
do	17	13	45
do	17	14	50
	17	15	60
	17	16	60
	17	17	60
	17	18	70

Name.	Block.	Lot.	Appraisal
	18	1	$ 60
	18	2	50
	18	3	50
	18	4	50
	18	5	50
	18	6	50
	18	7	80
	18	8	70
	18	9	70
	18	10	90
	18	11	70
	18	12	70
	18	13	70
	18	14	70
	18	15	70
	18	16	70
	18	17	70
Richard E. Allen	19	1	60
Frederick Dengler	19	2	70
do	19	3	85
do	19	4	85
	20	1	85
	20	2	85
Charles H. Coe	20	3	60
do	20	4	85
do	20	5	135
Richard E. Allen	20	6	50
do	20	7	60
do	20	8	60
do	20	9	60
do	20	10	50
do	20	11	35
Charles H. Coe	20	12	70
do	20	13	50
do	20	14	55
do	20	15	55
do	20	16	35
	21	1	50
	21	2	60
	21	3	70
Richard E. Allen	21	4	45
do	21	5	45
do	21	6	45
do	21	7	45
James H. Adams	22	1	45
do	22	2	45
do	22	3	45
do	23	1	35
do	23	2	$ 35
do	23	3	35
do	24	1	70
do	24	2	50
do	24	3	75
William K. Camp	24	4	65
Thomas Shannon and William Rawson	24	5	65
Fredrick Dingler	24	6	43
do	24	7	65
Joseph Reynolds	25	1	125
do	25	2	85
Henry Price	26	1	70
do	26	2	85
George Wright	26	3	43
Christopher Hagen	26	4	65
do	26	5	65
August Shiver	26	6	105
George H. Smith	26	7	35
William Staats	26	8	75
Albert Donnelly	26	9	35
Robert C. Jones	26	10	20
Samuel Henry	26	11	20
Joseph Reynolds	26	12	105
do	26	13	75

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal.
Joseph Reynolds	26	14	$ 70
do	26	15	60
Samuel Henry	26	16	70
William Staats	26	17	55
George H. Smith	26	18	60
Christopher Hagen	26	19	60
do	26	20	60
	26	21	45
Henry Price	26	22	50
do	26	23	50
Christopher Hagen	27	1	60
do	27	2	60
	27	3	45
	27	4	45
Christopher Hagen	27	5	45
Caroline Kelly	28	1	65
do	28	2	55
do	28	3	70
do	28	4	43
	29	1	60
Oma Jester	29	2	43
do	29	3	60
do	29	4	43
do	29	5	35
do	29	6	35
do	29	7	50
do	29	8	17
Elizabeth French	30	1	43
do	30	2	43
do	30	3	43
do	30	4	43
James H. Adams	31	1	45
do	31	2	45
do	31	3	45
do	31	4	70
do	31	5	45
do	31	6	45
do	31	7	45
do	31	8	45
John T. Baker	32	1	10
Smith Scroggin and Joseph B. Dodd	32	2	20
do	32	3	60
do	32	4	45
do	32	5	45
do	33	1	30
do	33	2	45
John T. Baker	33	3	45
do	33	4	65
do	33	5	35
Carrie Broadwell	33	6	50
	34	1	65
	34	2	130
Eliza Burke	34	3	85
Caroline Kelly	34	4	43
do	34	5	35
James J. Byrne	34	6	60
	34	7	35
	34	8	45
	34	9	45
	34	10	45
Caroline Kelly	35	1	30
do	35	2	17
do	35	3	20
do	35	4	17
	36	1	45
	36	2	45
Benjamin Hutchinson	36	3	50
do	36	4	43
	37	1	35
	37	2	45
Henry Woodfork	37	3	55
do	37	4	50
Henry Woodfork	37	5	$ 35
	37	6	35
	37	7	35
	37	8	25
	37	9	25
James H. Nichols	38	1	65
do	38	2	65
do	38	3	70
James H. Nichols, Jr	38	4	70
James H. Nichols	38	5	100
do	38	6	100
do	38	7	85
do	38	8	60
George D. Bumpas	38	9	45
James H. Nichols	38	10	50
Bertrand Ebos	39	1	85
do	39	2	35
Henry F. Crimm	39	3	25
James T. Mott	39	4	20
Elias W. Rector, George W. Murphy, and James B. Wood	39	5	50
Frank M. Moore	39	6	70
Emma Calhoun	39	7	85
Ferdinand Shicker	39	8	70
Levi H. Turner	39	9	150
Emanuel Burganer	39	10	85
Levi Thal	40	1	65
Thomas J. Bull	40	2	65
William A. Kirkpatrick	40	3	35
Thomas J. Bull	40	4	70
do	40	5	70
Enoch Woolman	40	6	35
Henry F. Crimm	40	7	40
George Holcombe	40	8	40
Mary A. Oller	41	1	50
	41	2	35
Isaiah P. Simpson	41	3	15
Mary S. Jack, Martha Ann Jack, Nancy Jane Jack, Joseph Jack and Luther S. Allard	41	4	60
Hester A. Moore	41	5	15
William Niece	41	6	35
Thomas J. Reed and Adin H. Whitmore	41	7	55
Annie Duke	41	8	70
Mary A. Oller	42	1	25
do	42	2	65
do	42	3	25
do	42	4	65
James H. Adams	43	1	65
do	43	2	45
do	43	3	45
do	43	4	50
do	43	5	50
James Cherry	44	1	15
Mary S. Jack, Martha Ann Jack, Nancy Jane Jack, Joseph Jack, and Luther S. Allard	44	2	55
Mary S. Jack, Martha Ann Jack, Nancy Jane Jack, Joseph Jack and Luther S. Allard	44	3	55
	44	4	50
	44	5	60
Edward H. Farley	44	6	75
James H. Adams	45	1	30
do	45	2	65
do	45	3	65
do	45	4	75
do	45	5	60
do	45	6	50

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block	Lot	Appraisal	Name.	Block.	Lot	Appraisal
Edward H. Farley	46	1	$ 45	Lizzie E. Collins	52	4	$ 75
Loftin M. Little	46	2	85	Henry A. Booth	52	5	130
	46	3	65	do	52	6	85
	46	4	50	do	52	7	70
	47	1	60	do	52	8	60
	47	2	75		53	1	60
	47	3	85	Bessie P. Ware	53	2	90
	47	4	85	Elizabeth Luker	53	3	140
Jacob W. Parker	47	5	95	do	53	4	140
do	47	6	100	do	53	5	135
do	47	7	75	do	53	6	135
do	47	8	70	do	53	7	175
	47	9	60	do	53	8	90
	47	10	60	do	53	9	80
	48	1	70	do	53	10	60
	48	2	70	do	53	11	60
	48	3	70	do	53	12	80
	48	4	70	Sarah J. Cloyes	53	13	100
Mary Finn, Theresa Ann Finn and Morcella Finn	48	5	75	Albert Belding	54	1	70
do	48	6	85	Benjamin L. Reams	54	2	170
do	48	7	75	do	54	3	85
do	48	8	100	do	54	4	85
	48	9	60	do	54	5	45
	48	10	60	Luther S. Allard and Sarah F. Allard	54	6	60
	49	1	60	do	54	7	40
	49	2	50	do	54	8	25
	49	3	55	Albert Belding	54	9	35
	49	4	55	do	54	10	35
	49	5	45	do	54	11	45
	49	6	45	Luther S. Allard and Sarah F. Allard	55	1	45
	49	7	45	do	55	2	65
	49	8	45	do	55	3	75
James H. Adams	49	9	45	do	55	4	170
Mary S. Jack, Martha Ann Jack, Nancy Jane Jack, Joseph Jack and Luther S. Allard	49	10	35	do	56	5	85
do	49	11	20	do	55	6	35
James H. Adams	49	12	25	James H. Whiteley	55	7	25
do	49	13	55	Luther S. Allard and Sarah F. Allard	55	8	35
	49	14	55	do	55	9	105
	49	15	40	do	55	10	35
	49	16	40	do	55	11	35
	49	17	35	do	55	11	50
				do	55	13	50
				do	55	14	50
Luther S. Allard and Sarah F. Allard	50	1	40	do	55	15	50
Henry Hecock	50	2	185	Jacob W. Parker	56	1	70
Simeon Shultice	50	3	170	do	56	2	110
Abbe H. Reed	50	4	170	do	56	3	110
Simeon Shultice	50	5	170	do	56	4	100
do	50	6	50	Henry Fellheimer	56	5	100
Mary Mason	50	7	70	Celia Karatofsky	56	6	185
James H. Adams	50	8	100	Jacob W. Parker	56	7	65
Mary S. Jack, Martha Ann Jack, Nancy Jane Jack, Joseph Jack and Luther S. Allard	50	9	45	do	56	8	60
				do	56	9	60
				Edmund W. Rucker	57	1	50
James T. Mott	50	10	85	Leonard S. Ordway	57	2	120
John B. Stone	51	1	110	do	57	3	160
do	51	2	85	Albert S. Woodcock	57	4	4
do	51	3	85	Emanuel Burgauer	57	5	45
do	51	4	95	Bernard Brown	57	6	195
George McAlister	51	5	110	William A. Kirk	57	7	70
Henry Rayfoot	51	6	130	William Allen	57	8	175
Emily Runyon	51	7	85	Rosa Loeb	57	9	70
Emily Renyon	51	8	60	Mary Irons	57	10	95
do	51	9	60	George Belding	57	11	45
do	51	10	60	Michael C. O'Bryan	57	12	115
do	51	11	85	Richard J. Fert	57	13	75
Lizzie E. Collins	52	1	50	John Greaves	57	14	40
do	52	2	50	George Belding	57	15	80
do	52	3	50	do	57	16	7
				do	57	17	6

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal
George Belding	57	18	$ 60
do	57	19	70
Leonard S. Ordway	57	20	85
do	57	21	45
Mollie E. Jones	58	1	20
do	58	2	40
Arthur Parker	58	3	125
Albert Belding	58	4	40
do	58	5	40
do	58	6	45
do	58	7	50
do	58	8	65
do	58	9	60
do	58	10	50
do	58	11	40
do	58	12	40
do	58	13	40
Alfred Kellum	59	1	145
do	59	2	155
Monroe Wilson	59	3	70
John J. Sumpter, guardian James King	59	4	120
Andrew Greene	59	5	70
do	59	6	45
John J. Sumpter, guardian James King	59	7	65
do	59	8	75
Alfred Kellum	59	9	100
do	59	10	100
Binah Quarles	60	1	170
Michael Dodd and Susan Dodd	60	2	65
Emma H. Forsythe	60	3	105
James M. Rice	60	4	65
Jackson Matthews	60	5	60
Susan Hunters	60	6	35
Ellis Woolman	60	7	43
Martin P. Harrison	60	8	70
	60	9	60
Mary K. Cayce	61	1	110
Perry Broadenax	61	2	70
	64	3	85
Angeline A. Sadler	61	4	170
Stewart K. White	61	5	110
Angeline A. Sadler	61	6	130
do	61	7	130
Mary K. Cayce	61	8	75
	62	1	85
	62	2	60
	62	3	60
	62	4	60
	62	5	75
Thomas J. Coggswell	62	6	55
do	62	7	45
Marcus J. D. Rast	62	8	95
Laura W. Baxter	62	9	185
William Thompson	62	10	130
Laura W. Baxter	62	11	120
Agnes D. Moore	62	12	135
Maggie Kimball	62	13	185
Elijah A. Shippey	63	1	130
Ernestine F. Rector	63	2	100
do	63	3	100
do	63	4	100
do	63	5	85
Emilie Frank	63	6	30
Ernestine F. Rector	63	7	50
Maria Gocio	63	8	50
	63	9	30
Mary E. Linde	63	10	45
do	63	11	45
do	63	12	45
do	63	13	85
	64	1	65

Name.	Block.	Lot.	Appraisal
Maria Gocio	64	2	$ 60
do	64	3	60
Thomas Polk	64	4	45
Anna Harris	64	5	43
Mary R. Rugg	64	6	43
William C. Derby	64	7	60
Mary K. Cayce	64	8	75
do	64	9	65
do	64	10	65
do	64	11	65
Maria Gocio	64	12	65
Hattie S. Kimball	64	13	65
	64	14	70
	64	15	45
	64	16	65
Mary K. Cayce	65	1	110
do	65	2	145
do	65	3	145
do	65	4	100
do	65	5	75
do	65	6	85
do	66	1	130
do	66	2	75
John Walthman	66	3	145
Adolphus J. Smith	66	4	105
Samuel Points	66	5	135
Ellen Walker	66	6	215
Herman Moscowitz	66	7	275
Oma Jester	66	8	130
Mary J. Files	67	1	65
do	67	2	65
do	67	3	50
do	67	4	85
Orlando A. Hobson	67	5	885
Balsora Pryor, Eugene Pitman and Carrie Pitman	67	6	43
Clarissa Bella	67	7	43
Fredrick Schickle, John W. Harrison and Thomas Howard	67	8	340
Owen O'Donnell	67	9	140
Ned Thompson	67	10	70
Sallie Wilson	67	11	85
Henry Vincent and Andrew Vincent	67	12	170
do	67	13	135
do	67	14	135
Kate McGrath	67	15	185
Mary J. Files	67	16	170
do	67	17	150
do	67	18	135
do	67	19	120
do	67	20	170
William H. Barry	67	21	50
George Belding	68	1	200
do	68	2	175
do	68	3	160
do	68	4	160
do	68	5	175
do	68	6	200
do	68	7	230
do	68	8	240
Frank Flynn	68	9	350
George Belding	68	10	175
do	68	11	550
George Belding	68	12	260
do	68	13	130
do	68	14	260
Susan E. Clyde and Daniel P. Ingrem	68	15	380
Perry Huff	68	16	400
Annie Bartels and Maggie Bartels	68	17	200
Daniel D. Shipley	68	18	275

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal.
William W. Joyce	68	19	$ 330
Jonathan Brantley	68	20	360
Mary J. Jones	69	1	75
Dinah Averitt	69	2	170
do	69	3	170
Leonidas B. McKenny	69	4	65
John S. Davis	69	5	255
Amanda E. Place	69	6	300
do	69	7	215
Mary J. Files	69	8	135
Fannie G. Williamson	69	9	170
Thomas J. Secoy	69	10	85
William H. Gaines and Maria Gaines	69	11	85
do	69	12	85
do	69	13	85
Elizur B. Hotchkiss	69	14	150
do	69	15	65
do	69	16	65
do	69	17	65
William H. Gaines and Maria Gaines	69	18	85
do	69	19	130
	70	1	35
	70	2	75
	70	3	60
	70	4	60
	70	5	60
Albert Mann	70	6	60
do	70	7	60
do	70	8	60
Wesley Steele, guardian Wesley Smith	70	9	40
	70	10	40
Caroline Jones	70	11	70
	70	12	100
	70	13	35
Lewis Rose	70	14	45
do	70	15	55
Benjamin H. Harrington	70	16	85
Burl Daily	70	17	35
do	70	18	65
do	70	19	100
Mary K. Cayce	71	1	120
do	71	2	75
do	71	3	75
do	71	4	75
do	71	5	75
	71	6	70
	71	7	60
	71	8	60
	71	9	60
	71	10	60
	71	11	60
	71	12	70
	71	13	85
Mary K. Cayce	71	14	70
	72	1	70
	72	2	85
	72	3	70
	72	4	120
	72	5	85
	72	6	65
James H. Adams	72	7	50
do	72	8	50
do	72	9	65
do	72	10	95
	72	11	95
	73	1	75
Susan E. Clyde	73	2	105
James D. Dawson	73	3	85
Betty Johnson	73	4	65
Eliza Bush	73	5	35
Rebecca Goodwin	73	6	$ 95
George W. Pritchard and Benjamin W. Goode, Julia Matthews, Cornelius Goode, Cecilia Goode, Bessie Davis, heirs of Simon R. Goode, deceased	73	7	60
Malvina Taylor	73	8	45
do	73	9	50
Westchina Cross	74	1	20
William Curtis	74	2	20
Robert A. Montgomery	74	3	35
do	74	4	45
Aaron Golden	74	5	20
Addie Finley	74	6	15
Aaron Golden	74	7	70
do	74	8	75
Maria L. Smith	74	9	65
Mary J. Ware	74	10	65
Emily Stoneham	74	11	35
Mary Ward	74	12	135
James Wash	74	13	155
Jordan Flowers	74	14	110
James L. Lovett	74	15	75
do	74	16	75
James F. Ritchie	75	1	95
Chloe Tall and Osborne Tall	75	2	45
do	75	3	50
John Greaves	75	4	65
Chester E. Grover	75	5	65
George M. French	75	6	110
William H. Gaines and Maria Gaines	75	7	85
do	75	8	85
do	75	9	100
do	75	10	85
do	75	11	85
do	75	12	85
Henry A. Booth	75	13	95
August Nasseus	75	14	75
Richard C. Tunstall	75	15	165
George W. Pritchard	75	16	35
James F. Ritchie	75	17	135
Benjamin F. Jenkins	76	1	50
William H. Gaines and Maria Gaines	76	2	60
do	76	3	80
do	76	4	80
do	76	5	80
do	76	6	90
do	76	7	90
do	76	8	80
do	76	9	80
do	76	10	80
do	76	11	80
do	76	12	80
The Trustees of the African Methodist Episcopal Church of the City of Hot Springs, Ark	76	13	150
Mary J. Ford	76	14	40
John Wakelin and Alfred Wakelin	77	1	375
George H. Smith	77	2	705
Kate McGrath	77	3	550
do	77	4	560
Bertha Schicker	77	5	650
Julia C. Ferguson	77	6	455
Philip A. Helfrich	77	7	615
Morris Moscowitz	77	8	340
Mary J. C. Lewis	77	9	330
Henry A. Booth	77	10	395
Algernon S. Garnett	77	11	380
do	77	12	380

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal.
William H. Gaines and Maria Gaines	77	13	$220
George M. Barnes	77	14	300
Margaret E. Dill	77	15	240
James F. Smith	77	16	285
James Madison and Wesley Steele	77	17	275
William H. Gaines and Maria Gaines	77	18	210
Michael Toale and Martha E. Toale	77	19	180
Frank Horton	77	20	250
James B. McCaffrey	77	21	200
William H. Gaines and Maria Gaines	77	22	270
do	77	24	250
do	77	24	250
do	77	25	250
Trustees of Methodist Episcopal Church, South, of Hot Springs, Ark	77	26	600
Rachel Bertsch	77	27	300
Elizabeth Sumpter, John J. Sumpter and Wm. Sumpter	77	28	350
do	77	29	180
Mary E. Daniels	77	30	320
Anna E. Little	77	31	550
Elizabeth Sumpter, John J. Sumpter, and Wm. Sumpter	77	32	600
Fannie G. Williamson	78	1	250
do	78	2	400
William H. Gaines and Maria Gaines	78	3	400
do	78	4	400
do	78	5	400
Augusta L. Stitt	78	6	400
do	78	7	400
John H. Scroggins and James W. Fannion	78	8	450
Samuel H. Ferguson	78	9	90
Augusta L. Stitt	78	10	70
do	78	11	120
do	78	12	120
William H. Gaines and Maria Gaines	78	13	200
do	78	14	200
do	78	15	280
Trustees of the Methodist Episcopal Church of Hot Springs, Ark	78	16	1,500
William H. Gaines and Maria Gaines	78	17	25
do	79	1	200
do	79	2	130
do	79	3	150
Joseph H. Molen	79	4	375
William H. Gaines and Maria Gaines	79	5	150
do	79	6	120
do	79	7	120
do	79	8	120
do	79	9	120
do	79	10	120
do	79	11	150
Julia S. Carhart	80	1	85
do	80	2	70
Dutie F. Casey	80	3	85
William H. Gaines and Maria Gaines	80	4	95
do	80	5	125
do	80	6	125
Curnel S. Williamson	80	7	255
Julia S. Carhart	80	8	195
Julia S. Carhart	80	9	$125
James Mungovin	81	1	255
William H. Gaines and Maria Gaines	81	2	195
Julia S. Carhart	81	3	50
do	81	4	120
William H. Gaines and Maria Gaines	81	5	110
do	81	6	170
do	81	7	125
James Mungovin	81	8	125
do	81	9	125
do	91	10	125
William H. Gaines and Maria Gaines	82	1	100
do	83	1	75
Mary Basco	83	2	65
William H. Gaines and Maria Gaines	83	3	95
do	83	4	110
do	83	5	85
do	83	6	60
do	83	7	45
William H. Gaines and Maria Gaines	84	1	140
do	84	2	140
do	84	3	175
do	84	4	175
do	84	5	140
do	84	6	140
do	85	1	220
do	85	2	200
do	85	3	200
do	85	4	180
Samuel W. Fordyce and John M. Peck	85	5	500
do	85	6	400
Saint Luke's Protestant Episcopal Church of Hot Springs, Ark	85	7	700
John M. Huffman	85	8	230
William H. Gaines and Maria Gaines	85	9	150
do	85	10	430
do	85	11	400
do	85	12	500
do	85	18	180
Elizabeth Sumpter, John J. Sumpter, and William Sumpter	86	1	685
do	86	2	685
do	86	3	685
do	86	4	685
William H. Gaines and Maria Gaines	86	5	685
do	86	6	685
do	86	7	685
do	86	8	685
do	86	9	685
Albert B. Gaines	86	10	575
Willam H. Gaines and Maria Gaines	86	11	250
do	86	12	250
do	86	13	270
do	86	14	250
do	86	15	250
do	86	16	250
Elizabeth Sumpter, John J. Sumpter, and William Sumpter	86	17	250
do	86	18	250
do	86	19	250
do	86	20	250

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal.
Lewis D. Cain	87	1	$1,195
do	87	2	1,210
George L. Wilson	87	3	1,040
do	87	4	1,040
Benjamin W. Goode	87	5	1,080
do	87	6	900
James H. Adams	87	7	660
do	87	8	660
William Sumpter	87	9	1,100
Elizabeth Sumpter, John J. Sumpter, and William Sumpter	87	10	935
do	87	11	935
do	87	12	825
Smith Scrogin	87	13	410
Anna S. Ward	87	14	135
Sarah Hale, Loretta Woodcock, John P. Warren, and John Boynton Hale, heirs of John C. Hale, deceased	88	1	660
do	88	2	840
do	88	3	700
do	88	4	630
do	88	5	700
do	88	6	695
do	88	7	725
do	88	8	660
James Riddell	88	9	595
Sarah Hale, Loretta Woodcock, John P. Warren, and John Boynton Hale, heirs of John C. Hale, deceased	88	10	570
Mary J. Cullen	88	11	1,055
Sevier C. Law	88	12	860
Thacker P. Crim	88	13	760
Sarah Hale, Loretta Woodcock, John P. Hale, and John Boynton Hale, heirs of John C. Hale, deceased	88	14	825
do	88	15	1,650
Thomas Bass and Martha Bass	89	1	360
do	89	2	400
Samuel M. Allen	89	3	480
do	89	4	450
James M. Ballentine, executor, and Agnes Ballentine, executrix of last will and testament of David Ballentine	89	5	800
do	89	6	600
do	89	7	500
do	89	8	500
do	89	9	500
do	89	10	500
do	89	11	420
Henry M. Rector	89	12	500
do	89	13	540
do	89	14	540
do	89	15	610
do	89	16	610
do	89	17	720
do	89	18	790
do	89	19	790
Jacob W. Parker	89	20	350
Henry M. Rector	89	21	705
Algernon S. Garnett	89	22	395
Henry P. Smith	89	23	420
Thaddeus Taylor	89	24	550
Henry M. Rector	89	25	550
do	89	26	550
do	89	27	440
do	89	28	440
Elihu B. Smith	89	29	715
Henry M. Rector	89	30	$485
do	89	31	420
do	89	32	605
do	89	33	715
Sarah Hale, Loretta Woodcock, John P. Warren and John Boynton Hale, heirs of John C. Hale, deceased	89	34	420
William P. Walsh	89	35	660
do	89	36	715
do	89	37	585
Charles N. Rockafellon	89	38	550
do	89	39	495
Sarah Hale, Loretta Woodcock, John P. Warren and John Boynton Hale, heirs of John C. Hale, deceased	89	40	550
do	89	41	550
do	89	42	550
do	89	43	550
do	89	44	550
do	89	45	550
do	89	46	550
do	89	47	550
do	89	48	550
do	89	49	550
do	89	50	560
Mary Thompsen	89	51	100
Julia Beldin	89	52	175
	89	53	12,500
Dwight P. Beldin	90	1	150
William J. Willoughby	90	2	100
do	90	3	100
do	90	4	85
William J. Willoughby	90	5	85
Riel E. Jackson	90	6	35
do	90	7	60
do	90	8	45
Dwight P. Beldwin	90	9	25
Riel E. Jackson	91	1	25
do	91	2	25
Hugh Walter Barry	91	3	70
do	91	4	70
James H. Boswell	91	5	70
Robert H. Whish	91	6	35
Francis Pu ket, Louisa Pucket and Charles Pucket	91	7	45
do	91	8	45
	91	9	35
George G. Latta and John J. Sumpter	91	10	45
do	91	11	45
do	91	12	45
Josephine A. Harris	92	1	45
Nancy J. Tindall and Alice J. Hill	92	2	60
	92	3	60
	92	4	60
	92	5	60
	92	6	60
	92	7	60
	92	8	60
	92	9	60
	92	10	45
	92	11	45
	92	12	45
	92	13	45
	92	14	45
	92	15	45
	92	16	45
Nancy A. Tindall and Alice J. Hill	92	17	45
do	92	18	25

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal.
George W. Murphy and James B. Wood	92	19	$ 25
	93	1	70
	93	2	45
	93	3	50
	93	4	60
	93	5	50
	93	6	85
	93	7	60
	93	8	65
	93	9	50
	93	10	70
	93	11	45
	93	12	50
	94	1	85
	94	2	85
	94	3	50
	94	4	65
	94	5	65
	94	6	95
	94	7	85
	94	8	85
	94	9	85
	94	10	105
Dwight P. Beldin	95	1	60
Jacob W. Parker	95	2	45
do	95	3	35
do	95	4	45
do	95	5	50
do	95	6	35
do	95	7	35
do	95	8	60
do	96	1	145
do	96	2	110
do	96	3	110
do	96	4	100
do	96	5	110
do	96	6	60
do	96	7	75
do	96	8	60
do	96	9	70
do	96	10	70
do	96	11	95
do	97	1	95
do	97	2	110
do	97	3	95
do	97	4	75
do	97	5	60
do	97	6	60
Michael Conley	97	7	155
Jacob W. Parker	97	8	145
Mark M. Hukill	98	1	60
George G. Latta and John J. Sumpter	98	2	60
do	98	3	60
Jane Baird	98	4	50
George G. Latta and John J. Sumpter	98	5	75
do	98	6	75
Josephine A. Harris	98	7	80
George G. Latta and John J. Sumpter	98	8	75
do	98	9	75
Jane Baird	98	10	45
George G. Latta and John J. Sumpter	98	11	35
do	98	12	35
Mark M. Hukill	98	13	35
Melvin L. Wells	99	1	45
do	99	2	40
	99	3	40
	99	4	40
	99	5	$ 40
	99	6	40
	99	7	50
	99	8	45
	99	9	35
	99	10	25
	99	11	25
	99	12	25
	99	13	25
Melvin L. Wells	99	14	35
do	100	1	60
	100	2	60
	100	3	60
	100	4	60
	100	5	60
	100	6	40
	100	7	40
	100	8	40
	100	9	40
	100	10	50
Richard J. McCreary	101	1	50
	101	2	30
	101	3	30
Joseph Martin	101	4	30
do	101	5	30
do	101	6	30
	101	7	30
	101	8	30
	101	9	30
	101	10	30
	101	11	30
	102	1	100
	102	2	85
	102	3	85
	102	4	60
	102	5	50
	102	6	75
William B. Little	103	1	270
John W. Shaw	103	2	140
Charles Cutter	103	3	170
Margrate Maxwell, Elizabeth McCarver, Fannie E. Morris, James T. Morris	103	4	95
James T. Morris	103	5	95
William B. Little	103	6	100
James M. Spence	104	1	210
do	104	2	185
Amanda E. Place	104	3	120
	104	4	120
James M. Spence	104	5	95
do	104	6	145
do	104	7	170
John J. Gillis	105	1	45
George W. Brantley	105	2	145
Rebecca J. Tucker	105	3	110
Fredericka Henkel	105	4	50
Jeremiah Fenton	105	5	255
Jacob W. Parker	105	6	170
do	105	7	110
do	105	8	255
do	105	9	230
do	105	10	255
do	105	11	260
do	105	12	95
Lizzie Bush	106	1	70
do	106	2	65
do	106	3	65
do	106	4	70
do	106	5	75
do	106	6	75
do	106	7	75
do	106	8	75
do	106	9	"

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal.
Lizzie Bush	106	10	$ 65
do	106	11	65
do	106	12	65
Lavinia A. Squire	106	13	85
John D. Ware	107	1	490
William N. Benton	107	2	340
James M. Spence	107	3	85
Robert G. Davies	107	4	210
James M. Spence	107	5	155
do	107	6	195
Nannie G. Houston	107	7	75
Green Payne	107	8	195
	107	9	35
Chesley R. Guinn	107	10	45
James McCall Searle	108	1	85
do	108	2	85
do	108	3	85
James R. Kirkland	108	4	125
Nannie G. Houston	108	5	70
do	108	6	110
James M. Spence	108	7	110
do	108	8	110
do	108	9	120
do	108	10	85
do	108	11	70
do	108	12	70
	108	13	50
James C. Trammel	108	14	75
James McCall Searle	108	15	120
Anna Horton	109	1	80
James McCall Searle	109	2	60
John B. Brooks	109	3	70
Frank Horton	109	4	100
do	109	5	80
	109	6	80
	109	7	80
	109	8	70
	109	9	70
	109	10	70
Chesley R. Guinn	110	1	300
do	110	2	350
do	110	3	250
Annie Duke	110	4	70
Chesley R. Guinn	110	5	200
do	110	6	220
do	110	7	200
do	110	8	160
Green Payne	110	9	100
Jonathan Week	110	10	300
Louisa Smith	110	11	70
Shade A. Sammons	110	12	300
Shade A. Sammons and Elizabeth Davis	110	13	300
Shade A. Sammons	111	1	100
Mary Rogers	111	2	60
Elizabeth Sumpter, John J. Sumpter and William Sumpter	111	3	160
do	111	4	126
do	111	5	125
do	111	6	200
do	111	7	220
do	111	8	225
do	111	9	150
do	112	1	750
do	112	2	750
do	112	3	750
do	112	4	700
do	112	5	350
do	112	6	300
do	112	7	250
do	112	8	350
do	112	9	160
Elizabeth Sumpter, John J. Sumpter and William Sumpter	112	10	$ 175
do	112	11	200
	113	1	90
	113	2	90
Melinda M. Housley	113	3	80
Peter Davis	113	4	130
do	113	5	100
Site granted Garland County for public buildings, etc	114	1	
	115	1	70
	115	2	70
	115	3	50
	115	4	50
	115	5	50
	115	6	50
	115	7	50
	115	8	50
	115	9	60
	116	1	60
	116	2	60
	116	3	50
	116	4	50
	116	5	50
	116	6	50
	117	1	70
	117	2	90
	117	3	70
	118	1	60
	118	2	100
	118	3	75
	118	4	50
	119	1	70
	119	2	70
	120	1	50
	120	2	50
	120	3	30
	120	4	30
	121	1	40
	121	2	50
	121	3	50
	122	1	40
	122	2	40
	122	3	40
	122	4	40
	123	1	60
	123	2	60
	123	3	50
	123	4	50
James Madison and Wesley Steele	124	1	200
Clark P. Crawford	124	2	225
Henry M. Rector	124	3	250
do	124	4	250
do	124	5	275
Michael B. O'Bryan	124	6	60
Mary Jane Whitlock	125	1	30
Mary Lee	125	2	30
Mary Jane Whitlock	125	3	150
do	125	4	150
do	125	5	75
do	125	6	85
Henry M. Rector	125	7	200
do	125	8	250
do	125	9	250
Matilda Lipscomb	125	10	200
Henry M. Rector	125	11	175
do	125	12	150
do	125	13	150

Schedule of Claimants and of Lots and Blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal
William H. Hammond, Fannie G. Blocher, Alice P. Hammond, heirs of William Hammond, deceased	126	1	$900
do	126	2	400
do	126	3	400
do	126	4	400
do	126	5	400
Henry Alexander	126	6	600
Leroy D. Beldin	126	7	920
Michael C. O'Bryan	126	8	750
Abraham Peters	126	9	850
Martha S. Akin	126	10	1,700
William J. McTague	126	11	400
Samual W. Fordyce	126	12	300
Mary Jane Whitlock	126	13	40
John L. Scranage	126	14	50
George I. Summers	126	15	75
Jacob Kempner	126	16	100
do	126	17	50
do	126	18	40
do	126	19	65
do	127	1	310
Frank Bertsch	127	2	150
Belindia T. Elliott	127	4	225
do	127	4	225
James K. Lane	127	5	60
William W. Fowler, Sophia Fowler, Joseph B. Fowler	127	5	60
Robert F. Fowler, E. L. Fowler, heirs of Albert M. Fowler	127	6	55
Belindia T. Elliott	127	7	43
do	127	8	50
Mattie O'Neal	127	9	40
Mary Haley	127	10	40
	127	11	50
	127	12	50
	127	1	100
	127	14	75
	127	15	65
	127	16	65
Thomas Bass and Martha Bass	128	1	430
do	128	2	400
do	128	3	450
do	128	4	400
Michael Conley	128	5	85
do	128	6	58
do	128	7	37
George Wisson	128	8	82
Josie Barrett, Mary A. Barrett, Claude F. Barrett, Charles L. Barrett, Charles L. Wall, William W. Wall and Mary L. Wall	128	9	84
Edward Fitzgerald, Bishop of Little Rock, for the use of the Catholic Church, Hot Springs, Ark	128	10	500
Henry P. Smith	128	11	300
Hebe F. Rector	128	12	400
Peyton Grissom	128	13	100
David H. Harris	128	14	45
Henry Robinson	128	15	45
do	128	16	50
do	128	17	60
Emanuel Burganer	128	18	45
William King	128	19	60
Carrie Broadwell	128	20	45
Jemima Pape	128	21	55
Michael Fagan	128	22	15
Belle Wilburn	128	23	10
George N. Johnson	128	24	20
Mary A. Thompson	128	25	30
Jupiter Mendenhall	128	26	$ 50
do	128	27	80
Enoch Stearns	128	28	40
Richard Hill	128	29	40
Rufus Baker	128	30	40
Isabell Mormon	128	31	30
do	128	32	20
Joseph Morrison	129	1	625
Maria E. Payne	129	2	550
Laura McConihi	129	3	506
Patrick Dugan	129	4	550
Richard E. Allen	129	5	800
Elizabeth Heironimas	129	6	600
King B. Flowers	129	7	450
Sarah Flowers	129	8	550
Robert F. Parker	129	9	425
William H. Gaines and Maria Gaines	129	10	500
do	129	11	450
do	129	12	475
Samuel W. Vaughan	130	1	500
James H. Nichols	130	2	760
Daniel D. Shipley	130	3	580
William H. Gaines and Maria Gaines	130	4	630
do	130	5	580
do	130	6	586
Charlotte Cohn	130	7	1,040
Jacob L. P. Caver	130	8	640
Joseph W. Kimball	130	9	550
John J. Sumpter	130	10	480
Albert B. Gaines	130	11	620
do	130	12	620
William H. Gaines and Maria Gaines	130	13	650
Mary Thompson	131	1	250
do	131	2	225
do	131	3	225
do	131	4	300
do	131	5	450
Isaac G. Bailey	131	6	475
Hamilton Lanier	131	7	900
Elizabeth Sumpter, John J. Sumpter and Wm. Sumpter	131	8	800
do	131	9	200
do	131	10	200
do	131	11	200
do	131	12	225
Hiram A. Whittington	132	1	300
Michael Meagher	132	2	125
Patrick H. Garaghty	132	3	125
Dollie A. McLeod	132	4	125
William N. Benton	132	5	125
Emanuel Burganer	132	6	250
Patrick J. Delaney	132	7	125
Lucinda Davis	132	8	125
James C. Reilly	132	9	250
Martha C. Howard	132	10	125
Mary E. Reid	132	11	125
Sarah E. Goslee	132	12	125
Wm. Abbey and David Abbey	132	13	140
Henry Haney	132	14	140
do	132	15	130
Helena Huffman	132	16	100
Trustees of the Roanoke Baptist Church of Hot Springs, Ark. (colored)	132	17	75
Amy C. Nelson	133	1	600
do	133	2	600
Fannie B. Latta	133	3	400
Emma M. Elliott	133	4	450
James O. Fox	133	5	550
Francis B. Southerland	133	6	600

Schedule of Claimants and of Lots and Blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal.
Michael Shea and Andrew Braon	134	1	$ 100
James F. Kennedy	134	2	100
Patrick McGowan	134	3	450
Alfred Whittington	135	1	315
George L. Wilson	135	2	455
Gilbert C. Greenway	135	3	440
do	135	4	60
do	135	5	50
do	135	6	40
do	135	7	35
	135	8	30
	135	9	30
	135	10	30
	135	11	45
	135	12	40
William H. Lewis and Christiana Lewis	135	13	50
Henry Haney	135	14	30
George Abbey	135	15	100
William H. Lewis and Christiana Lewis	135	16	75
do	135	17	75
	135	18	90
Carter Brutus	135	19	180
do	135	20	140
	135	21	95
George L. Wilson	135	22	70
do	135	23	90
do	135	24	50
do	135	25	50
do	135	26	80
Hiram A. Whittington	135	27	150
William J. McTague	135	28	10
William H. Hollinger	135	29	85
Martha V. Vaughn	136	1	150
do	136	2	50
	136	3	70
Robert Taylor	136	4	100
Trustees of the Methodist Episcopal Church (Wesley Chapel) of Hot Springs, Ark	136	5	40
Mary A. Thompson	136	6	40
George N. Johnson	136	7	50
Rina Basil	136	8	100
Armstead J. Handy	136	9	70
Henry Ware	136	10	100
George Wesson	136	11	90
do	136	12	70
John Finney	136	13	40
do	136	14	30
	136	15	20
	136	16	35
	136	17	40
	136	18	80
	136	19	80
	136	20	40
Sarah A. Manuel	136	21	40
Martha V. Vaughn	136	22	100
Thomas J. Evans	137	1	50
Ann Keaton	137	2	40
do	137	3	40
do	137	4	40
do	137	5	40
Rina Basil	137	6	50
Alexander Peoples	137	7	20
Rina Basil	137	8	35
do	137	9	35
George Woolridge	137	10	40
	137	11	20
William H. Green	137	12	80
	137	13	45
George Bryant	137	14	70
do	137	15	40
George Woolridge	137	16	$ 25
do	137	17	50
do	137	18	60
Rina Basil	137	19	65
Alexander Peoples	137	20	35
Charles Patton	137	21	15
Anderson Cravens	137	22	15
Albert L. Cuthbert	137	23	50
Henry Battle	137	24	70
Kate McGrath	137	25	55
Ann Keaton	138	1	30
Aaron Johnson	138	2	10
Charles Wilson	138	3	15
Rebecca Cunningham	138	4	40
do	138	5	40
Charles Wilson	138	6	40
	138	7	40
James Harris	138	8	30
	138	9	15
	138	10	20
	138	11	20
	138	12	20
	138	13	20
	138	14	20
	138	15	20
	138	16	20
	138	17	20
	138	18	20
	138	19	30
	138	20	30
	138	21	30
	138	22	30
Ann Keaton	138	23	20
do	138	24	25
Lewis Buchanan	139	1	40
Henry Robinson and Maggie Robinson	139	2	80
George Bryant	139	3	60
	139	4	60
	139	5	50
	139	6	40
	139	7	30
	139	8	25
	139	9	25
	139	10	35
	139	11	40
	139	12	40
George Wesson	139	13	30
Henry Robinson and Maggie Robinson	139	14	30
Alfred Whittington	140	1	300
Hiram A. Whittington	140	2	1,080
Alexander Romain Smith	140	3	1,000
Albert Brown	140	4	300
John I. Adams, Jay L. Adams, William H. Renard and Edward C. Adams	140	5	200
Jesse Ware	140	6	240
Almon Brooks	140	7	510
Samuel G. Colburn	140	8	50
Harrison M. Bussell	140	9	30
Edgar A. Nickels	140	10	20
Nancy J. Felkel	140	11	25
Oglesby S. Prophitt	140	12	40
	140	13	40
	140	14	40
John Walsh	140	15	40
Jane Baird and August Hitzfield	140	16	40
	140	17	40
	140	18	40
Charles Bryan	140	19	40
do	140	20	50
	140	21	50
	140	22	60

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal.
	140	23	$ 60
	140	24	60
	140	25	100
William H. Hollinger	140	26	60
Hiram A. Whittington	140	27	175
do	140	28	120
	140	29	25
	140	30	25
	140	31	25
	140	32	25
	140	33	25
	140	34	25
Michael C. O'Bryan	141	1	500
Annie R. Menninger, Adin H. Whitmore, and Reuben F. Harriott	141	2	500
James Barnes	141	3	500
James Barnes	141	4	200
William F. Housley	142	1	150
Charles N. Rockafellon	142	2	600
Elias W. Rector	142	3	350
Daniel B. Dyer	142	4	150
Michael C. O'Bryan	142	5	60
Annie R. Menninger, Adin H. Whitmore, and Reuben F. Harriott	142	6	60
James Barnes	142	7	40
do	142	8	40
do	142	9	40
Margaret C. Jordon	142	10	50
do	142	11	55
Edward R. Foreman	142	12	90
do	142	13	70
Andrew Brown	142	14	110
	142	15	60
	142	16	50
	142	17	40
	142	18	40
	142	19	40
Margaret C. Jordon	143	1	60
do	143	2	250
Edward R. Foreman	143	3	175
do	143	4	175
Martin M. Lowrey	143	5	30
Edward R. Foreman	143	6	70
do	143	7	70
do	143	8	50
do	143	9	50
James Barnes	143	10	30
Jane Fisher	144	1	180
Mollie B. Hood	144	2	85
Ann R. Claybrook	144	3	260
Thaddeus Taylor	144	4	170
do	144	5	150
do	144	6	100
Ann R. Claybrook	144	7	60
Julia Candler	144	8	25
Fannie A. Hawkins	144	9	20
	144	10	30
	144	11	40
	144	12	30
Jane Baird and August Hitzfield	144	13	30
Fannie A. Hawkins	144	14	30
Julia Candler	144	15	25
Oglesby Prophitt	144	16	20
Robert R. Blunson	144	17	15
John P. Evans	144	18	50
Elizabeth Irvin	144	19	30
Archibald N. Beard	144	20	40
Thompson C. Pepkin	144	21	90
Mary Harrison	144	22	200
John F. Lowrey	144	23	60
Samuel G. Colburn	144	24	$ 60
John Finney	145	1	40
	145	2	50
	145	3	35
	145	4	35
	145	5	30
	145	6	25
	145	7	40
	145	8	75
	145	9	80
	145	10	90
	145	11	100
	145	12	100
Henry Haney	145	13	40
Benjamin F. Bunch	146	1	60
Thomas W. Gibbs	146	2	70
John E. Fisher	146	3	140
Jane L. Reed	146	4	130
	146	5	130
	146	6	130
	146	7	75
	146	8	50
	146	9	30
	46	10	40
Jane L. Reed	146	11	40
do	146	12	50
do	146	13	60
do	146	14	80
Charles Fisher	147	1	90
Cracie Wilson	147	2	40
Joseph O. Pool	147	3	30
Jane Fisher	148	1	50
Nellie D. Mitchell	148	2	150
do	148	3	110
do	148	4	110
Jane Fisher	148	5	30
do	148	6	40
do	148	7	50
do	148	8	45
do	148	9	35
Kate D. Franklin	148	10	35
Jane Fisher	148	11	50
do	148	12	40
do	148	13	40
do	148	14	40
Kate D. Franklin	148	15	30
	149	1	80
	149	2	70
Laura A. Turner	149	3	75
Mary C. Cole	149	4	45
Charles H. Coe	149	5	25
Mary A. Griffith	149	6	150
do	149	7	60
do	149	8	40
do	149	9	40
Laura A. Turner	149	10	20
	149	11	20
	149	12	20
	149	13	30
Dennis C. Lynch	150	1	20
Phineas Barnes	150	2	25
do	150	3	65
do	150	4	50
do	150	5	50
	150	6	60
	150	7	50
	150	8	20
Joseph Wetzler	150	9	25
	150	10	45
	150	11	50
	150	12	55
Phineas Barnes	150	13	60
Isaac L. Butterfield	150	14	25

Schedule of claimants and of lots and blocks, etc.—Continued.

Name	Block.	Lot.	Appraisal.
Francesca Castle	150	15	60
Patrick J. Ledwidge	151	1	225
Edward J. Curry	151	2	125
Samuel W. Fordyce	151	3	125
do	151	4	125
John W. Clary	151	5	190
Mary Baker	151	6	110
do	151	7	110
do	151	8	60
do	151	9	50
	151	10	100
	151	11	100
Azariah Livingston	151	12	70
do	151	13	20
John W. Clary	151	14	30
Powell E. Hogge	151	15	70
Patrick J. Ledwidge	151	16	50
do	151	17	70
Kate D. Franklin	152	1	90
Francesca Castle	152	2	160
do	152	3	160
do	152	4	160
Isaac L. Butterfield	152	5	160
Dennis C. Lynch	152	6	75
Margaret Meagher	152	7	75
Caroline P. Bell	152	8	75
do	152	9	160
John Harrison	152	10	50
Nicholas M. Bell	152	11	80
Phineas Barnes	153	1	150
do	153	2	130
do	153	3	110
Robert B. Jaggers	154	1	45
George J. Summers	154	2	60
John F. Lowrey	154	3	35
Robert S. Smith	154	4	30
George B. French	154	5	60
Ophelia Chairs	154	6	60
William F. Rose	154	7	30
Jane E. Morrow	154	8	40
Rebecca J. Crowl	154	9	45
Noah A. Brown, Sterling Brown, Isaac A. Brown	154	10	25
Angeline Mason			
Shade A. Sammons	154	11	10
Mary A. Joyce	155	1	35
Walter A. Moore	155	2	30
Thomas J. Evans	155	3	30
Bessie G. Davis	155	4	25
James Riddell	155	5	25
Cassius M. Sage	155	6	25
Omer T. Porter	155	7	25
Arabella Hunster	155	8	25
Eva Hunster	155	9	25
Walter A. Moore	155	10	20
do	155	11	50
do	155	12	55
William H. Watt	155	13	30
Ophelia Chairs	155	14	60
Prosper H. Ellsworth	156	1	250
Aaron H. Yates	156	2	140
Robert S. Smith	156	3	70
Mattie E. Passmore	156	4	75
Emeline Wallace	156	5	150
William Milliner	156	6	50
	156	7	120
	156	8	35
	156	9	40
	156	10	40
Ida C. Adamson	156	11	40
Azariah Livingston	156	12	30
do	156	13	30
	156	14	50
Prosper H. Ellsworth	156	15	45
do	156	16	50
Ida C. Adamson	156	17	20
	157	2	30
	157	3	25
Prosper H. Ellsworth	157	4	10
	157	5	20
	157	6	50
Mary Reid	157	7	75
do	157	8	80
Washington H. Steay	157	9	40
William J. Terry	157	10	20
William Haskins	157	11	45
do	157	12	45
	157	13	45
Prosper H. Ellsworth	157	14	30
Patrick J. Ledgwick	158	1	30
Mary A. Griffith	158	2	30
do	158	3	30
do	158	4	40
Patrick J. Ledwidge	158	5	45
do	158	6	40
do	158	7	70
do	158	8	25
do	158	9	35
	159	1	40
Mary A. Griffith	159	2	30
Patrick J. Ledwidge	159	3	30
	159	4	30
	159	5	30
	159	6	30
	159	7	30
	159	8	30
Phineas Barnes	160	1	50
do	160	2	50
do	160	3	65
do	160	4	30
do	160	5	40
do	160	6	35
	160	7	30
	160	8	30
Nellie D. Mitchell	161	1	75
Jane Fisher	161	2	40
do	161	3	40
do	161	4	40
do	161	5	25
Kate D. Franklin	161	6	40
Clement I. Sharman	161	7	50
Jane Fisher, Charles H. Fisher, John E. Fisher, Mary B. Hood	161	8	40
do	161	9	50
do	161	10	40
Jane Fisher	162	1	35
Charles H. Fisher	162	2	35
Jane Fisher, Charles H. Fisher, John E. Fisher, Mary B. Hood	162	3	70
do	162	4	60
do	162	5	30
	162	6	40
	162	7	30
	162	8	30
Jane Fisher, Charles H. Fisher, John E. Fisher, Mary B. Hood	162	9	40
do	162	10	50
do	163	1	40
do	163	2	40
	163	3	40
	163	4	25
	163	5	25
	163	6	20
	163	7	25
	163	8	30
Marx Horn	163	9	30

Schedule of claimants and of lots and blocks, etc.—Continued.

Name.	Block.	Lot.	Appraisal
Lewis Coleman	163	10	$40
Jane Fisher, Charles H. Fisher, John E. Fisher, Mary B. Hood	163	11	20
	164	1	40
	164	2	30
	164	3	20
	164	4	25
	164	5	20
Joseph Wetzler	164	6	30
do	164	7	30
do	164	8	30
	165	1	40
	165	2	30
	165	3	25
	165	4	25
	165	5	35
	165	6	40
	165	7	30
	165	8	25
	165	9	25
Joseph Wetzler	166	1	30
	166	2	35
	166	3	40
	166	4	35
	166	5	35
Joseph Wetzler	166	6	30
do	167	1	25
William H. Pilgrim	167	2	25
do	167	3	30
	167	4	30
	168	1	25
	168	2	20
	168	3	30
	168	4	30
	168	5	40
	168	6	30
	168	7	25
Marx Horn	169	1	15
	169	2	30
	169	3	30
	169	4	30
Marietta M. Holt	169	5	30
do	169	6	15
	169	7	30
	169	8	30
	170	1	60
	170	2	50
	170	3	50
	170	4	45
	170	5	25
	170	6	45
	170	7	45
	170	8	50
	170	9	30
John M. Kinkead	170	10	40
Andrew Gmelin	170	11	30
	171	1	20
	171	2	35
	171	3	30
	171	4	25
	171	5	25
John M. Kinkead	172	1	15
Andrew J. Bryan	172	2	30
	172	3	60
	172	4	65
	172	5	25
	172	6	30
	172	7	40
	172	8	30
	172	9	30
	172	10	25
	172	11	25
	172	12	$40
	172	13	50
	173	1	15
	173	2	25
	173	3	25
	173	4	30
	174	1	55
	174	2	40
	174	3	35
	174	4	40
	174	5	30
	174	6	30
	174	7	25
	174	8	30
	175	1	10
	175	2	20
	175	3	20
	175	4	20
	175	5	20
	175	6	20
	175	7	25
	175	8	25
	175	9	25
	175	10	30
George Bryant	176	1	30
	176	2	25
	176	3	30
	176	4	10
	176	5	15
	176	6	25
	176	7	15
Walter A. Moore	177	1	15
do	177	2	20
do	177	3	40
do	177	4	35
	177	5	30
	177	6	30
	177	7	30
	177	8	25
	177	9	15
	177	10	10
	177	11	30
	177	12	20
Walter A. Moore	177	13	20
do	177	14	20
do	177	15	20
do	177	16	20
George W. Mann	178	1	35
do	178	2	35
	178	3	35
John B. Scott	178	4	35
do	178	5	35
Walter A. Moore	178	6	25
	178	7	15
	178	8	10
	178	9	25
	178	10	20
Walter A. Moore	178	11	30
do	179	1	35
do	179	2	40
James S. Kemp	179	3	40
Walter A. Moore	179	4	40
do	179	5	35
	179	6	30
	179	7	30
	179	8	35
	179	9	15
	179	10	15
	179	11	25
	179	12	20
Walter A. Moore	179	13	20
do	179	14	20

Schedule of claimants and of lots and blocks, etc.—Continued.

Name	Block	Lot.	Appraisal.
Walter A. Moore	180	1	$125
do	180	2	80
do	180	3	30
do	180	4	25
do	180	5	20
Isabell Mormon	181	1	25
Rufus Baker	181	2	40
Caswell Murphy	181	3	30
Lewis H. King	181	4	50
Ferriby Rogers	181	5	40
John Carter	181	6	25
Wilson Mackadoo	181	7	15
	181	8	15
Rufus Baker	182	1	100
Mariah Wakelin	182	2	30
Lydia Robbins, John W. Echols, Lusetta Harvey and Augusta Echols	182	3	110
John R. Gibbs	182	4	65
Harrison T. Rook	182	5	40
Cornelius Lewis	182	6	70
John Henderson	182	7	35
Hannah Robinson	182	8	20
Henry Grimm	182	9	45
Lydia Robbins, John W. Echols, Lusetta Harvey and Augusta Echols	182	10	40
George W. Brown	182	11	100
Caroline Washington	182	12	100
Hannah Alexander	182	13	30
Lydia Robbins, John W. Echols, Lusetta Harvey and Augusta Echols	182	14	50
Rufus Baker	182	15	40
Lydia Robbins, John W. Echols, Lusetta Harvey and Augusta Echols	182	16	35
do	182	17	30
do	182	18	35
do	182	19	20
Rufus Baker	182	20	40
	183	1	15
Celia Thrasher	183	2	25
Hannah Alexander	183	3	30
Patsey Jones	183	4	20
Robert F. Parker	183	5	40
Ann Higdon	183	6	40
	183	7	30
Joshua B. Crawford	183	8	25
Joshua B. Crawford	183	9	20
	183	10	20
	183	11	15
	183	12	15
	184	1	40
Jackson D. Page	184	2	30
do	184	3	50
	184	4	25
Peggy Mulholland	184	5	15
	184	6	20
	184	7	20
Eliza A. Robeson	185	1	25
do	185	2	25
do	185	3	25
do	185	4	30
John Wilson Haley	185	5	50
Eliza A. Robeson	185	6	55
do	185	7	55
Jacob Kempner	185	8	140
Eliza A. Robeson	185	9	30
do	185	10	20
Fanny Murphy	186	1	150
Wm. Passmore, Daniel B. Dyer and Charles F. Larrabee	186	2	110

Name.	Block.	Lot.	Appraisal.
Henry A. Booth	186	3	$70
Lewis T. Lynch	186	4	65
Joseph Kempner	186	5	40
Samuel C. Pyeatt	186	6	55
Peggy Mulholland	187	1	20
	187	2	20
	187	3	25
	187	4	25
	187	5	20
	187	6	25
	187	7	25
Eliza A. Robeson	188	1	30
James Porter	188	2	30
Mary Steel	188	3	40
	188	4	30
	188	5	30
	188	6	30
	188	7	20
	188	8	20
	188	9	20
	188	10	20
	188	11	20
	188	12	20
	188	13	20
	188	14	25
James Porter	188	15	25
	189	1	40
	189	2	25
	189	3	25
	189	4	20
	189	5	20
	189	6	40
Walter A. Moore	190	1	40
do	190	2	20
	190	3	25
	190	4	30
Walter A. Moore	191	1	25
do	191	2	30
do	191	3	40
	191	4	30
	191	5	20
Ida C. Adamson	192	1	25
Thomas Haskins	192	2	40
do	192	3	50
John J. Wilson	192	4	15
Alfred Whittington	192	5	25
Mary M. Ross	192	6	20
	192	7	20
	193	1	20
	193	2	30
	193	3	30
	193	4	30
John F. Lowrey	193	5	20
	193	6	20
Alfred Whittington	193	7	20
do	193	8	25
	193	9	20
	193	10	25
	193	11	15
	193	12	20
	193	13	15
	193	14	10
	193	15	10
	193	16	20
	193	17	15
	193	18	15
	194	1	100
	194	2	300
	194	3	300
	194	4	300
	194	5	300
	194	6	300
	194	7	300

Schedule of claimants and of lots and blocks, etc.—Concluded.

Name.	Block.	Lot.	Appraisal.
	194	8	$300
	194	9	100
Robert G. Davies, Elias W. Rector and Henry M. Rector, Jr.	195	1	100
do	195	2	100
do	195	3	50
do	195	4	25
do	195	5	25
do	195	6	25
do	195	7	25
do	196	1	15
do	196	2	15
Robert G. Davies, Elias W. Rector and Henry M. Rector, Jr.	196	3	$15
do	196	4	15
do	196	5	15
do	196	6	15
do	196	7	15
do	196	8	15
do	196	9	15
West Mountain			26,960
North Mountain			22,400
Sugar-loaf Mountain			12,900

APPENDIX "F."

PETITION.

PETITION OF THE ACTUAL AND BONA-FIDE SETTLERS ON THE SO-CALLED HOT SPRINGS RESERVATION, IN THE STATE OF ARKANSAS.

To the Honorable Senate and House of Representatives of the United States, in Congress assembled:

WHEREAS, Your petitioners and memorialists, being actual residents and *bona-fide* settlers on what is known as the Hot Springs Reservation in the State of Arkansas, respectfully represent that,

WHEREAS, An act of Congress, approved April 20, 1832, contemplated and intended to reserve certain lands, known and described as the "Hot Springs Reservation," in the State of Arkansas, from sale, entry or location; and

WHEREAS, Anterior to that date, and subsequently, many persons having been attracted there by the curative properties of the waters, and for the purpose of administering to the wants and necessities of the invalid sojourner, until the present resident population constitutes a town of considerable size and importance, and by the persevering, toil, endurance and suffering of the said actual resident settlers, this wild, rough and rugged mountain canyon, has been transformed into a most quaint and romantic, yet temporarily built city; and

WHEREAS, The settlers on said lands, to about four thousand in number, are prevented and delayed, by the uncertain and precarious nature of their claims, from placing the substantial and permanent improvements thereon, that the comfort of their families, and the wants and necessities of the invalid public require and demand, whereby the growth and prosperity of this particular section is greatly retarded.

We, the undersigned, therefore respectfully pray and ask your honorable body, at an early day of this session and term of Congress, to provide for the sale of all the said lands in said legal reservation, upon an equitable basis, giving and reserving to *bona-fide* settlers the prior right and privilege of purchasing their substantially improved premises, lots or enclosures, at a nominal or reasonable price, and on deferred payments.

Resolved, therefore, That our Senators and Representatives in Congress, be and are hereby earnestly urged and requested to use their valuable influence in behalf of the prayer of this petition.

W. S. Bell,
L. S. Allard,
B. McCaughn,
F. T. Strickland, etc.,
Robert B. Clyde,
James F. Smith, Agt.,
James Madison,
I. M. Flecalbld,
M. Moscourt,
Mollie Smith,
A. H. Stephens,
J. L. Austin,
H. F. Crier,
B. W. Darby,
Dan Graham,
T. W. Martin,
James Wash,
Wis Simpson,
David Allen,
J. D. Kimball,
John Kubler,
Geo. W. Baxter,
Henry Grimm,
O. T. Beck,
J. H. Parker,
J. W. Jordan,
James F. Ritchie,
Wm Nelson, U. S. A.,
J. J. Gillis,
H. Lee,
Joseph Cook,
Leo Meyer,
William Purdy,
Mrs. L. H. Boxby,
Wm. H. Gaines, Jr.,
Ana E. Duke,
A. R. Smith,
Mrs. F. L. Williams,
E. A. Shippey,
G. Allard,
D. F. Parker,
Miss Mollie Gaines,
J. M. Hoffman,
I. Flowers,

J. A. Walton,
Aaron Smith,
King Flowers,
Jeremiah Fenton,
I. B. Heirominus,
C. K. Grimm,
Aaron Golding,
H. Moscourt,
Perry Ashley,
T. I. Lewis,
Nelson Davis,
John Graham,
B. H. Herndon,
Ferdinand Scheiker,
Joseph Brumley,
W. A. Kirk,
C. Cohn,
T. J. Bull,
I. W. Kimball,
G. C. Kubler,
John D. Ware,
John Wakelin,
Frank Pease,
Wm. H. Barry, M. D.,
J. H. Leny,
Samuel Newlins,
E. J. Courtnay,
How. Vincent,
Jo. Cogburn,
A. B. Gaines,
Harry Thomas,
J. C. Morris,
A. L. Gaines,
S. F. Allard,
A. R. Livingston,
David Wat'bry Parker,
Ada C. Allard,
A. H. Hobson, M. D.,
Simeon Schulter,
Mrs. G. Stitt,
U. S. G. Allard,
C. Allard,
M. E. Allard,
W. Wright,

R. Thornazin,
L. D. Sage,
Edwin Rice,
Louis Lamar, Jr.,
J. J. Robertson,
A. B. Booth,
G. W. McMurray,
Hugh Price,
B. Hand,
Stanton Taylor,
Henry Rogers,
G. A. Carper,
S. H. Ferguson,
J. T. Brumley,
E. Horhman,
John B. Stone,
C. G. Bush,
I. Cohen,
Albert Donnelly,
L. W. Baxter,
Alfred Wakelin,
B. W. Goode,
L. Thal,
David C. Casey,
J. F. Parker,
Patsy Dugan,
Matt. McGinnis,
Jim Porter,
Henry Green,
T. P. Grinn,
C. J. Gillis,
Mrs. Lora J. Parker,
M. Paquett,
John J. Allard,
T. H. Duke,
J. H. Hand,
S. C. Belding,
Lu S. Allard,
W. C. Allard,
Sam Courts,
E. I. Wolfington,
Hebe D. Parker,
F. Horton,
Charles Cutter,

J. M. Kinkead,
Mrs. L. Blasdell,
Elizabeth Earl,
James Brooks,
W. H. Barry,
P. H. Ellsworth, M.D.,
A. W. B. Reed,
Carry Lewis,
Louis Fellows,
Rosella Moore,
Ellen Miller,
W. A. Moore,
Liza Taylor,
T. W. Gibbs,
Mike Dodd,
Wm. T. Harvy,
Mrs. Tryson,
James C. Reillens,
Eugene J. Corntenay,
John L. Bowers,
A. S. Woodsock,
Thomas Carnwody,
T. J. Bryan,
Mary Carnwody,
Maggie Smith,
R. Q. O'Bryan,
E. J. Taylor,
J. Karatopsky,
Thad Taylor, Jr.,
Henry Pratt,
P. A. Casett,
Lucy Smith,
F. Casett,
James Jordan,
James Carmoody,
L. A. Puble,
J. I. Lodwidge,
Sidney Puble,
Laura Lynch,
Mrs. Jane Lodwidge,
D. H. Wells,
Jack Franklin,
J. E. Davis,
Caroline P. Bell,
Mary Cole,
Thomas A. Bell,

Frank M. Smith,
J. S. Finley.
Henry Jones,
George Cole,
George Bryant,
Mrs. B. E. Ellsworth,
Eleury Casy,
Joseph Brumley,
Agnes A. D. Moore,
William Miler,
Mary Agnes Moore,
William Prind,
R. B. Jaggers,
Susan Dodd,
Emily her × mark. Murphy,
Charles Paul,
George Wuson,
Sary Wuson,
Eliza Bush,
William Creighton,
Phinilla Whitworth,
Charles Bryan,
William Carnwody,
H. Smith,
M. C. O'Bryan,
Tena Taylor,
J. A. O'Bryan,
Ada M. Hibbard,
A. Karatopsky,
Tally Montgomery,
Joe Bu——,
Richard Littleton,
Con Henry,
Pat Carnwody,
L. R. Puble,
Corydon Halliburton,
C. M. Puble,
Edward Curry,
William Milliner,
L. C. Barret,
K. D Franklin,
D. J. Cline,
Nicholas M. Bell
Sandy Cole,
William A. Bell, Jr.,
W. T. Terry,

B. W. Darby,
H. V. Allard,
Annie E. Smith,
James Carwoody,
Thomas H. Lewis,
Arthur Gaines,
J. T. Brumley,
W. J. Moore,
Thomas Baas James,
Adella Moore,
Annie Miller,
E. R. Foreman.
Liza Dodd,
W. J. McTague,
Case his × mark. Murphy,
Peter McGrath,
Jude Wuson,
Ora Wuson,
Patrick Carnwody,
Lizzie Bowers,
E. Burgauer,
James Carnwody,
H. P. Smith,
L. D Beldin,
Thad Taylor, Sr.,
C. W. O'Bryan,
Blanche Taylor,
C. Karatopsky,
Hunter Montgomery,
Florence Montgomery,
Sam Sidney Phillips,
W. B. Rud,
James Brooks,
S. Jordan,
Tot. Gray,
J. W. C. Shanoway,
Mrs Ellen Long,
L. C. Lynch,
C. E. Lynch,
S. W. Franklin, M. D.,
E. S. Ship,
M. P. Sheldon,
Elizabeth Davis,
William A. Bell,
Phebe Busby,
R. R. Lewis,

Charley Busby,
John Lewis,
P. Barnes,
Dan Brock
Lidey M. Barry,
Julia Barnes,
R. J. Barnes,
M. Clary,
Mary Baker,
Edward H. Clayes,
J. S. Black,
John J. Sumpter,
Jennie L. Sumpter,
Wilmer Kingsbury,
Mary Leah Sumpter,
Ada B. Cayce,
James G. Allen,

Caroline Lewis,
Henry Burley,
J. P. Vance,
Julia A. Barry,
Isom Butterfield,
A. A. Clary,
L. H. Clary,
I. T. Baker,
Frank Butterfield,
N. W. Hobson,
William Sumpter,
John F. Gable,
Chester Kingsbury,
O. H. Sumpter,
Mrs. Mary R. Cayce,
Alex George, Jr.,
R. W. Ely,

Charles. T. Lewis,
William Cooksey,
Charles N. Burs,
J. L. Butterfield,
Flora Butterfield,
L. C. Clary,
R. W. Barnes,
Amanda Butterfield,
George G Latta,
Elizabeth Sumpter,
John A. Watkins,
Nanna E. Sumpter,
John W. Sumpter,
J. P. Bryant,
Sallie E. George,
Wilmer M. Mooney,
M. I. Henderson Bros.,
Attorneys Seventh Circuit.

Charles F. Vatterlin,
A. P. S. Warn,
W. F. Clyde,
Columbus O'Neal,
A. E. Webb,
M. H. Hollinger,
C. C. Webb,
Fanny Tall,
Lee Haly,
William Chamber,
Liza Chamber,
Dorie Justus,
Ann Henry,
Laney Hopkins,
Joe Alexander,
West Sell,
John Williams,
Mary Sell,
John Lee,
Abe Peters,
Eliza Robson,
Matilda Lipscomb,

Wm. H. Gaines,
W. P. Harrison,
Martha O'Neal,
B. F. Webb,
Thomas A. Hassell,
C. J. Webb,
Clay Tall,
Wilson Haly,
Mary Chamber,
Perry Carter,
Ann Justus,
Sam Henry,
Albert Justus,
Henry Alexander,
Tempe Crofford,
Melton Alexander,
John Sell,
May Lee,
Nelson Foyler,
Gast Peters,
Alex Martin,
Fanny Johnson,

I. H. Scoggins,
Newton O'Neal,
J. C. Stanton,
John O'Neal,
G. W Webb,
Osbern Tall,
Mary Haly,
Neil Chamber,
Rachel Carter,
Walder Carter,
Abel Goodun,
Ann Justus,
Mary Justus,
James Porter,
Martha Alexander,
Mile Sell,
John Williams, Jr.,
Mary Foull,
Francis Lee,
Mira Peters,
Sally Graw,
Henry Lipscomb,

Tom Toyson Johnson, John his × mark Carter,

Sam M. Quartlebaum,

J. M. Blake,

OFFICE OF THE SECRETARY OF THE SENATE OF THE UNITED STATES,
WASHINGTON, D. C.

I, Anson G. McCook, Secretary of the Senate of the United States, do hereby certify that the paper hereto attached is a true and correct copy of the petition of the actual and *bona-fide* settlers on the so-called Hot Springs Reservation in the State of Arkansas now on file in this office.

In testimony whereof, I have hereunto set my hand, this tenth day of February, 1892.

ANSON G. McCOOK,
Secretary.

APPENDIX "G."

[PRINTED BY ORDER OF THE SENATE.]

PETITION

OF

CITIZENS OF HOT SPRINGS, ARK.

HOT SPRINGS, ARK.,
January 12, 1880.

DEAR SIR: At a very large mass-meeting of the claimants and occupants on the Hot Springs Reservation, the accompanying memorial was unanimously adopted, and the undersigned were instructed to forward to you a certified copy of the same, and request the immediate presentation to the Senate as requested (the original going to Hon. J. E. Cravens). And we further state that 95 per cent. of the claimants on the reservation oppose the re opening of any case, and desire the decisions of the United States commission to stand. And we further state that John J. Sumpter represents only his own personal interest in this matter at Washington.

J. D. KIMBALL,
Chairman of Meeting.
W. A. KIRK,
Secretary of Meeting.
J. D. KIMBALL,
W. P. WALSH,
GEO. W. BAXTER,
Committee.

Hon. A. H. GARLAND,
United States Senator, Washington, D. C.

PETITION

To the Honorable Senate and House of Representatives of the United States, in Congress assembled:

The undersigned memorialists, citizens of Hot Springs, Ark., in mass meeting assembled, would respectfully represent that, under authority of laws passed by your honorable body, the President of

the United States sent three commissioners to Hot Springs, to-wit: Messrs A. H. Cragin, John Coburn and M. L. Stearns, whose duty it was, under the law, to ascertain what occupants and claimants on the Hot Springs Reservation were entitled to buy their homes thereon by reason of having made innocent settlement and improvement on government land. Your memorialists show that for two years the said commissioners have been engaged in having the Hot Springs Reservation surveyed and platted as a town site, and in investigating the claims of the people who have made their homes on said town site, by settlement or by fair purchase from those who made the original settlement and improvements; that said commissioners found over 900 *bona fide* occupants and claimants on the Hot Springs Reservation, who, according to the spirit and letter of the laws passed by Congress for the relief of said claimants, were entitled to the homes thus occupied and held by them; and the said commissioners, acting under authority of said acts of Congress, have issued certificates of title to said claimants, giving them the right to enter at the United States land office, and hold, the parcels of land thus awarded to them.

Your memorialists, the citizens of Hot Springs, desire here, now, and in this public manner, to express their heartfelt gratitude to Congress for the just, timely and liberal legislation, that has resulted thus happily, and relieved them of the distress that has for years afflicted them in the threatened loss of their homes. They believe, and take pleasure in saying, that in the matter of awarding titles the action of the commissioners has in the main been discriminating and just, and that few, if any, citizens with colorable claim to their homes have failed, through the beneficent act of Congress, to receive the assurance of the government that they shall not be dispossessed.

Your memorialists, with entire unanimity, certify to your honorable body that the citizens of Hot Springs have accepted the decisions of the commissioners and the certificates based thereon in good faith as final and conclusive as to all questions of title. They intend to uphold this settlement as a happy ending of the disastrous litigation and paralyzing uncertainty that have for so many years retarded the growth and hindered the usefulness of the most remarkable water-cure in the world.

But while applauding the wisdom and generosity of Congress in providing for the people of Hot Springs a way out of their troubles, and while approving the action of the commissioners in the award of the titles as securing substantial justice to all claimants, your memorialists feel constrained to protest, in the most earnest manner, against the burdensome assessment which the commissioners have made on their lots, and which assessments the certificates issued to them require them to pay before patents for their land can be issued.

Your memorialists make no charge against the commissioners in regard to this matter other than that of a grievous error of judgment which, unless cured by Congress, will result in the bankruptcy and

ruin of the unfortunate people whom it was clearly the intention of Congress to protect and prosper. If any point was made clear in the debates in Congress on the passage of the Hot Springs bill it was that it was neither the wish nor the purpose of the government to speculate out of the labor and capital of the people who had settled and built up the town of Hot Springs. In the Senate the chairman of the Committee on Public Lands (Mr. Oglesby, of Illinois,) made frequent addresses in support of the bill which had been prepared by that committee. In his remarks in the Senate on February 23, 1877, he said:

"I am satisfied that the government does not wish to make money out of those people. I do not believe it would be wise for the government to undertake to make money or to earn revenues out of the buildings or ground there. * * * I think it would profit by letting the people down there have that land at $1 25 an acre and quit the business. * * * Then, those people have an equitable claim anyhow. They went down there to live, cast their lot with those waters and amid those people; and according to the western policy, now of many years' standing, they have a sort of a right to have the land at the lowest possible rate, even if they shall be required to pay anything. * * * The general purpose of the bill I favor; the general purpose of the bill the committee favors."

On another occasion, while the bill was pending, the chairman of the Committee on Public Lands said, most emphatically: "The committee recommended the bill and are willing to stand by the bill. * * * The general spirit of the bill we heartily indorse."

And again, on the last day of the debate, and just before the bill was voted on and finally passed, the same chairman of the Committee on Public Lands (Mr. Oglesby), in an earnest speech in support of it, said:

"The committee felt, and, I think, correctly felt, and I believe the good sense of the Senate will sustain them in the end, that the government of the United States cannot afford to go down there speculating in this property. * * * Therefore, I said this morning, I have no objection to giving it to the State of Arkansas, or giving it to the County of Garland; or better still, giving it to the occupants of the ground. * * * I believe the just principle is to give it to the people who have been occupying, who have been living on it."

Your memorialists, the aggrieved citizens of Hot Springs, feel justified in quoting so abundantly from the speeches of the chairman of the Committee on Public Lands by the fact that the distinguished Senator made it constantly appear that he spoke for the entire committee in his explanations of the spirit and purpose of the bill. The rest of the committee, by their silence, acquiesced; and the Senate, by accepting and passing the committee's bill, adopted it, subject to the construction of the Committee on Public Lands as to its meaning and intention, both in letter and spirit. With this his-

tory of the passage of the Hot Springs bill before them, your memorialists must conclude that it was not the intention of Congress to speculate out of the misfor unes of the people of Hot Springs, who had homes here, but no title to them; but that it was the intention of Congress to give them their homes at the lowest rates, and on the most favorable terms. Your memorialists cannot think that any intelligent court in Christendom would put any other construction on the law.

And in taking this view of the kindly intention of Congress, your memorialists are supported by the fact that it is in perfect harmony with the practice of the government in all the long history of its dealings with the settlers on public lands.

It is a part of the established general land law of the United States, as will be seen by reference to the Revised Statutes, sections 2377, 2378, 2379, that every town established on public lands, even those whose lands are not open to agricultural entry, as the reservation of Hot Springs was not, shall be entitled to its town site at the minimum rate of $1.25 per acre. A town of over 100 and under 200 inhabitants is entitled to 320 acres; a town of over 200 and under 1000 inhabitants, 640 acres; a town of over 1000 and under 2000 inhabitants, 1280 acres, and 320 acres for each additional 1000 inhabitants up to 5000 inhabitants, where the grant stops, the maximum area for town-site purposes being 2560 acres, which is just the area of Hot Springs Reservation, on a part of which the town of Hot Springs is built. But one favored town exists in the far west in the matter of government bounty. Salt Lake City, the Babylon of Mormonism, by a special act of Congress (see Revised Statutes of the United States, section 2380), was granted 320 acres of land for town-site purposes for every 1000 inhabitants up to 15,000. So that the chief town of Utah has received a comparative gratuity of nearly 6000 acres for town-site purposes. In pleading the liberal provisions of the general laws of the United States as to town sites, need your memorialists advert to the fact that all the important cities and towns in the Northwestern States and Territories established in late years have received their sites as a comparative gift from the government? That Virginia City paid nothing for its valuable site and its Comstock lode, that has yielded its hundreds of millions of dollars? That Deadwood, Denver and Leadville, with their great population and enormous wealth, by the side of either of which Hot Springs is but a trifling consideration, all received the government bounty in the gift of the public land they are built on? In view of these facts, what must be thought of that interpretation of the Hot Springs law, under which the commissioners, after awarding titles justly, as the law authorized and required; after reserving to the government the larger portion of the paltry "reservation" of 2560 acres, including all the hot water, which alone gives value to the property here, proceed to assess upon the Hot Springs citizens the unequal and enormous amount of over $200,000 for their moderate

and humble homes? What have the citizens of Hot Springs done that they should not enjoy equal rights under the law with the more rich and prosperous citizens of Deadwood, Denver and Leadville? Why is it that Hot Springs is to be weighed down by assessment and all her more fortunate sisters built on government lands enriched by gratuities of their town sites? Why is it that the Christian societies of Hot Springs, the Episcopalians, Catholics, Presbyterians, Methodists and Baptists, white and colored, who, after years of pious labor and self-denial, have erected humble but creditable houses of worship, are required to pay into the national treasury an excessive valuation of their lots or lose them, and lose all the anxious Christian work of years, while alien-born polygamists of Utah, rich and insolent defiers of the laws of Christianity and the country, have an over-measure of land granted them by a special act of Congress, whereon to breed sedition and build proud temples to mammon and lust? Was there ever before seen in a Christian land so odious a distinction against justice and decency? And yet this inequality and injustice is practically established and enforced by the action of the Hot Springs commissioners in the interpretation of a law that Congress intended to be a law for the relief of a distressed and deserving people.

And who are the people of Hot Springs that have thus been singled out, as it were, for spoilation and oppression? They are a population of 5700 souls, as shown by ballot, and under the general statutes already quoted would be entitled to 2500 acres of land for their town site. They are mostly native-born citizens, representing nearly all the States of the American Union. A very large proportion have been driven here by stress of broken health, so often attended by broken fortunes. They have, in many cases, been relieved of their pains, but not of their poverty. Perhaps not twenty persons of all the nine hundred claimants, from whom over $200,000 are to be taken by assessment, could raise $1000 by pawning all their worldly goods outside of their Hot Springs homes. They live here seeking health, but not making wealth. Quite recently a government receiver came here and took away over $33,000 for the rent of the very houses the people themselves had built. Later, a conflagration nearly destroyed the whole town. Still later, a pestilence that scourged another part of the South for two seasons, destroyed the only profitable business conducted at Hot Springs by reason of the quarantine enforced. Yet this unhappy people, poor to start with, and paying originally, in most cases, full prices for their homes to parties who supposed they had a right to sell, exhausted by law suits trying to maintain their doubtful rights, crushed at last in spirit by losing all through a decision of the Supreme Court, impoverished next by heavy rents collected by a paternal government for having innocently settled upon and improved the government property, then wasted by fire and pestilence, this people, seemingly forgotten of God and abandoned of men, are recognized as offering,

in the judgment of Hot Springs commissioners, a bonanza of cash assessments to replenish the already swollen coffers of the national treasury. Surely there is enough in this spectacle to excite the derision of the highly favored saints of Mormonism at the cruelty of justice under the Gentile law.

But, notwithstanding the hardships of their lot and the harshness of their usage, your memorialists claim that through all the years of their residence at Hot Springs they have, to the utmost of their scanty means, done a Christian duty by the friendless and afflicted poor of all the States that have been and are perpetually thrown upon their charity. They have fed them at their doors, given them raiment, cared for them as well as possible when dying, and buried decently when dead. No community in the United States, for its numbers, has been so sorely taxed to keep a free hospital for the invalid paupers of all the States, and none more richly deserved, at the present moment, in their appeal to Congress, the sympathy and support of all Christian societies and benevolent hearts of the entire nation.

The citizens of Hot Springs ask simply justice and equal rights under the law. They ask that the heavy assessment on their town be remitted and they be placed on footing of all other towns established on government lands by recent public law. They ask that the houses taken and removed by order of the commissioners be paid for. They ask that the money collected by the governent from our people as rents on their own houses, be returned to them. They do not admit that they ought to be taxed with the cost of the commission sent here. The government reserves all the hot water—worth millions of dollars, and only available through a resident population here—and keeps land enough for sale to pay all the costs of the commission. The people of Hot Springs are no more responsible than the government itself for the condition of things that made the commission and the expense of it necessary. How could the plain people be expected to have knowledge in advance of their leaders and teachers? And is it now admitted in history, that for about fifty years the keenest lawyers did not find out, and the wisest tribunals of justice did not know, and the paid officers of the national government had forgotten the facts that invalidated the title of your memorialists to their homes on the Hot Springs reservation?

If the American Congress think that we, the people of Hot Springs, speak warmly and too earnestly on this subject, let them remember that we are pleading for the birthright of freedom—equal rights under the law; that we are pleading for the possession of the only property that many of us possess in this life; that we plead in the presence of our poor surroundings, and with the burden of the nation's paupers ever fastened upon us; and that we plead against a monstrous wrong that would well nigh confiscate and depopulate a town in the interest of usurers and speculators, and, as we verily believe, against the well-known intentions of Congress and the wishes of the American people.

Petitions of claimants filed with United States Hot Springs Commission.

Number.	Names of Claimants.	Remarks.
55	T. C. Pipkins	
481	T. J. Evans	
33	Alf. Whittington	
53	L. S. Ordway	
2	H. A. Ballentine	
15	Mrs. S. E. Goslee	
293	H. A. Booth	
446	Robert Smith	
	W. W. Waters	
408	G. C. Greenway	
50	J. Wetzler	
624	Mattie E. Passmore	
461	Passmore, Dyer & Laribee	
795	William Millnor	
124	Jackson Matthews	
144	James Madison	
194	Broadnax Perry	
633	W. H. Hollinger, by C. T. Gardner, attorney	
841	Isaac B. Albaugh	
911	James Kirk	Not granted.
492	Ben. L. Reams (part owner)	
234, 453	J. Kavatofsky	Not granted.
11	Amy C. Nelson	
68	T. J. Reed, M. D	
355	Mary Reed	
355	do	
67, 68	Allin Whitmore	
1, 159, 514	A. S. Garnett, M. D	
480	John Newill	
501	S. M. Allen	
23, 486, 782	H. A. Whittington	
619	J. B. Scott	
18	W. D. Abby	
505	J. D. Sage	
	Samuel Braun	
853	James F. Ritchie	
288	Annie Harris, by D. C. Rugg, attorney	
250	Jonathan Brantley, by D. C. Rugg, attorney	
247	George W. Barnes, by D. C. Rugg, attorney	
694	W. W. Joyce, by D. C. Rugg, attorney	
7	Mrs. A. R. Claybrook	
322	L. D. Belden	
218	Henry Alexander, by attorney	
6	W. F. Housely	
331	J. M. Housely	
479	Patsey Jones, her x mark; witness, J. D. Page	
582	Fertrick Rogers, his x mark; witness, J. D. Page	
787	Robert Taylor	
449	Celia Thrasher, her x mark; witness, Robert Taylor	
796	Rebecca Cunningham, her x mark	
896	Ann Thrasher, her x mark; wife of Harrison	
515	Rina Bazell, her x mark; witness, J. D. Page	
682	James Harris, his x mark; witness, C. S. Robinson	
927, 798	Sam Smith	
48, 812	George N. Johnson	
384, 385	George Wesson, his x mark	
379	George Bryant, his x mark	
106	John R. Gibbs	
868	Willis McAdoo, his x mark	
840	Peggy Keyton	
846	Moliffe Steel, her x mark	
178	Henry Grimm	
	R. C. Tunstall	
9	D. H. Harris	
871	Sam Henry	
635	J. C. McCrary	
407	Eastor Herold	
379	George Bryant	
	Calvin Davis	
148	Elizabeth Porter	
746	James Porter	
297	King Flowers	
5	A. K. Smith	
548	J. J. Morrow	

Petitions of claimants filed with United States Hot Springs Commission.—Continued.

Number.	Names of Claimants.	Remarks.
260	Owen O'Donnell	
	William King; witnesses, D. D. Shipley, C. S. Williamson	
947	E. A. Nickels	Not granted.
	Sam Haywood	
470, 493	Albert L. Cuthbert	
225	Peyton Grissom, by A. L. Cuthbert, attorney in fact	
811	Mary J. Ford, by A. L. Cuthbert, attorney in fact	
208, 617	Robert F. Parker, by A. L. Cuthbert, attorney in fact	
442	Emma Hunster	
441	Bertie Hunster	
99	C. B. Crawford	
479	Patsey Jones	
316	Hannah Alexander	
627, 266 and others.	J. H. Scroggins	
118	Dennis Fellows, his x mark; witnesses, C. S. Williamson and J. D. Page	
195	Thomas Shannon	
182	do	
212	J. B. Crawford	
533	Peggy Mulholland	
149	B. F. Jenkins	
909	David Shelton	
75	Henry Price	
898, 191	Henry Haney, his x mark; witnesses, W. P. Walsh and Henry Price	
163	Jonathan Welk	
872	E. T. Lee	Not granted.
388	Henry Robinson, his x mark; witnesses, C. T. Robinson and J. D. Page	
604	John Armstrong	
	Josiah Clark	
375	Miss Emma Forsyth	
233	P. A. Castle	
560	Julius Breite	Not granted.
538	John Brown	do
390	I. Kernahan	do
881	Mary Vanosdell	do
167, 906, 910	Smith Scogin	
401, 402, 452 541	S. A. Sammons	
255	A. J. Handy	
485	James C. Trammel	
327	Caroline Washington, her x mark; witnesses, C. S. Williamson, W. P. Walsh.	
118	Louis Fellows, his x mark; witnesses, C. S. Williamson, Charles Matthews	
531	Charles Matthews	
176	Caswell Murphy, his x mark; witnesses, W. P. Walsh, C. S. Williamson	
547	Andrew J. Clay, his x mark; witnesses, C. S. Williamson, Smith Scoggin	
910	Scogin & Dodd	
729	Rachel Chapman, her x mark; witnesses, Smith Scogin, J. D. Page	
703	William Cotton; witnesses, S. A. Sammons, Smith Scogin	
817, 818, 819	R. E. Allen	
601	Clement I. Shannan	
768	Lizzie E. Collins; C. S. Williamson, attorney	
790	P. J. Maher	
840	Ann Keaton, her x mark; witnesses, L. D. Cain, W. P. Walsh	
749	Belle Mormon	
316	Hannah Alexander	
172, 476, 477	J. F. Lowrey	
515	H. M. Bussell, by J. F. Lowrey, attorney	
883, 712	Lee Greenleaf, his x mark; Wm. H. Nelson and F. J. Reed, witnesses	
875	Betty Johnson, by E. Prince, attorney	
677	Bertha Schicker	
675	August Schicker	
676	Ferdinand Schicker	
607	Mat C. Howard	
388	Hannah Robinson	
391	John Graham	Not granted.
245, 545	John Greaves	
368	Shickel, Harrison & Co	
	Timothy Lowery	
495, 392	Arthur Parker, his x mark; witness, P. A. Helfrich	Not granted.
310	T. H. Morton	do
714	T. P. Crim	
37	J. O. Fox, M. D	
37	Sallie G. Fox	

Petitions of claimants filed with United States Hot Springs Commission.—Continued.

Number.	Names of Claimants	Remarks.
425	Joseph H. Mulen	
878	Omer T. Porter	
	W. J. Cripps	Not granted.
136	J. W. Kirkead	
753, 754, 757	J. Kempner	
157	J. D. Dawson	
696, 697	Martin P. Harrison	
589	A. Aldrich	
164	M. M. Lowery	
240	G. Razzeti	
272	Henry Battle, his x mark, per Flynn	
581	J. C. Carter, his x mark, per Flynn	
258	Henry Ware	
770, 282	Henry Vincent, his x mark; per P. A. Helfrich	
615, 480	James Mungovan, per Helfrich	
35, 242	J. P. Evans	
	Thomas R. Thornton	
101	Monroe Wilson	
926, 649	W. H. Lewis	
	B. F. Bearden	
353	T. B. Buchanan	
82	Frank Bertsch	
400	Ella B. McMurray	Not granted.
241	J. S. Kemp	
265	Andrew Green, by E. Green, attorney in fact	
728	D. P. Belden, per attorney	
707	S. H. Taylor	
706	N. H. Cloyes	
238	Franciska Castle	
334	Mrs. E. Burke	
683	Maria Smith	
198	A. S. Woodcock	
285, 153	Mary Lovings; witnesses, Charles Garratt, Henry C. Howard	
539	Joseph Maron	
752	R. E. Jackson	
11	Mary E. Dill, by I. W. Carhart, attorney	
14, 318	Henry F. Smith	
196	Al Wakelin, by Al Wakelin	
132	M. E. Wakelin, by Al Wakelin	
196	John Wakelin, by Al Wakelin	
	Edwin Rice	
374	W. J. Terry, by D. C. Rugg, attorney	
588	William K. Kemp	
326	Hiram Irwin	Not granted.
745	Richard Hill	
269	Charles Patton	
*123	Lydia Hardy, deceased	
*806	John Wilson Haley	
*317	Rebecca J. Crowl	
*320, 321	Oma Jester	
*577	Josephine Jones	
*348, 362	William Staats	
	William H. Furbush	Not granted.
*686	William P. Carpenter	do
*805	Dice Chapman	do
*258	James L. Barnes	do
*252	Patrick Carmoody	do
*406	Jane Redmond	do
*775	William Scarbrough	do
*287	G. L. Tanner	do
*810	Nelson Taylor, deceased	Granted.
*942	Easter Dortch	Not granted.
*908	Lizzie and William Fitzhugh	do
*550, 762	Brutus Carter	do
*173	Elizabeth Irwin	Granted.
*616	B. F. Bunch	do
*937, 792	Burrel Daily	do
	William Key	do
*276	Ottenheimer Brothers	do
*774	Aaron Johnson	do
*239	John Scranage	do
*936	Augustus Thrasher	do

*The records of the United States commission will show that W. P. Walsh is the attorney of record for these parties.

Petitions of claimants filed with United States Hot Springs Commission—Continued.

Number.	Names of Claimants.	Remarks.
*935	Parlee Gross	
*895	James V. Crosby	
*843	Michael Williams	
*760	Edward Chambers	
*708	Mahala Cotton	
*679	Christ. Dawers	
*776, 777	Charlie Williams	
*484	Leo Meyer	
*494, 854	John W. Longworth	
*839	Westchina Cross	
*291	Chloe and Osburn Tall	
*471	Ann Higdon	
*155	Levi Thal	
*156	do	
*742	Marcellus Finn, heir of I. Finn, deceased	
*24	D. C. Lynch	
586	J. W. Kimbell	
629	Hattie S. Kimbell	
443	Maggie Kimbell	
829	Agnes D. Moore	
58	John Waltham	
535	Elizabeth French	
295	Sarah Flowers; W. P. Walsh, attorney	
305	Amelia Frank	
328	Albert Donnelly	
73	Jupiter Mendenhall by S. H. Stitt, attorney in fact	
880	Frank Brown; W. P. Walsh, attorney	
568	Rebecca Goodman	
540	Samuel H. Stitt & Co	
116	C. N. Rockafell w	
117	do	
648	do	
503	Joseph Kempner, by J. Kempner, attorney	
335	Fannie Murphy, by J. Kempner, attorney	
845	J. P. Simpson, by J. Kempner, attorney	
502	H. F. Ray, by J. Kempner, attorney	
305	Joe Kempner, by J. Kempner, attorney	
292	Frank Bosco, by W. P. Walsh, attorney	
292	Mary Bosco, by W. P. Walsh, attorney	
45, 46, 333	Kate McGrath	
640	C. S. Williamson and A. B. Gaines, by C. S. Williamson, agent	
67	Mary P. Gaines	
767	Hook and Ladder Fire Company	
797	Henry Jones by William Nelson, attorney in fact	
780	Abe Kempner	
940	J. M. Lowrey	
634	Julia Belcen, by J. P. Mellard, attorney in fact	
341	Laura McConnihi, by J. H. Nichols, attorney in fact	
181, 730	Michael Connelly, his x mark	
307	William C. Derby, by G. W. Baxter, attorney	
634	Orlando A. Hobson, M. D., by G. W. Baxter, attorney	
129	J. H. Lewis, by G. W. Baxter, attorney	
635	O. A. Hobson, M. D., by G. W. Baxter, attorney	
88	Robert R. Brunson, by G. W. Baxter, attorney	
81	Sarah A. Manuel, by G. W. Baxter, attorney	
503	Jordan Flowers, by G. W. Baxter, attorney	
864	do	
315	George Clemson, by G. W. Baxter, attorney	
924	N. I. Feikel, by G. W. Baxter, attorney	
564	M. M. Hukil, by G. W. Baxter, attorney	
565	do	
243	Caroline Jones, by G. W. Baxter, attorney	
303	Matilda Lipscomb	
367	Michael Megher; G. W. Baxter, attorney	
273	Bina Quals	
768	M. J. D. Rash; G. W. Baxter, attorney	
139	John W. Shaw; G. W. Baxter, attorney	
128	James W. Whitely; G. W. Baxter, attorney	
193	John Henderson	
705	James Bellamy	
628	Michael Dodd	
285, 286	Celia Karatofsky	

*The records of the United States commission will show that W. P. Walsh is the attorney of record for these parties.

Petitions of claimants filed with United States Hot Springs Commission.—Continued.

Number.	Names of Claimants.	Remarks.
718	W. W. Joyce	
694	M. A. Joyce	
71	George W. Brown	
160	M. W. and M. E. Toale	
807	Rebecca Crowls	
569	Dennis Watts	Not granted.
583	Lewis Buchanan (per Dennis Watts)	do
108	Laura A. Turner	
109	Charles Gerson, claim purchased of Helana Huffman	
187	Eliza Bush, her x mark; witnesses W. P. Walsh and A. L. Cuthbert	
47	J. L. Butterfield	
	Chris. Hagen; attorney, I. G. Bailey	
277	Tempy Bryant	
595	William H. Green	
776	Charles Wilson	
34	Mollie E. Jones	
499	James H. Boswell	
179	I. F. Kennedy	
113, 870	Belinda T. Elliott	
719	Albert Belding	
882	C. M. Sage	
626	H. T. Rook	
43	John B. Stone	
907	James Wash, his x mark; witnesses C. S. Williamson and D. C. Lynch	
354	Ellen Walker, by D. D. Shipley, part owner	
366	George Dallas Bumpas	
21	Elizabeth Luker, by Sam W. Fordyce	
520	Fordyce & Peek	
544	C. C. Caughman	
897	Azariah R. Livingston	
779	William Connelly	Not granted.
174	Thomas Bass; W. P. Walsh, attorney of record	
174	Martha Bass; W. P. Walsh, attorney of record	
143	Miron L. Reed, by T. F. Goslee, attorney	
18	William David Abbey	
19	George Abbey	
912	John P. Eaves	Not granted.
304	William C. Wells	do
808	Louis D. Cain	do
506	John Walsh	
123	Augustus Echols, administrator estate Lydia H. Hardy	
550	John M. Harrell; purchased of Carter Brutus	
60	C. C. Akin, Martha S. Akin	
815	John C. Peay, administrator estate William H. Hammond's heirs	
689	Harriet R. Ayers	
420	G. Altheimer, by J. M. Harrell, attorney of record	
274	H. M. Clarke & Co., by J. M. Harrell, attorney	
275	do	
722	Mary J. Davison	
204	Mary A. Griffith	
35	Aaron Smith, part owner in claim of J. P. Evans	
691	J. A. Hollinger & Co., by S. H. Stitt, owner of claim	
226, 227	Mary A. Thomson	
552	L. Goodman, owner of claim, purchased of J. M. Spence	
777	Charles Wilson, per T. M. Waker, attorney	
21	Elizabeth Luker, by J. N. Conger, owner of one-half interest	
166	Emily Runyon, by J. N. Conger, owner of one-half interest	
830	Elias W. Rector, S. W. Murphy and J. B. Wood, by J. N. Conger, owner of claim	
51	T. J. Secoy, by J. N. Conger, attorney in fact	
419	Josey Reynolds, by J. N. Conger, attorney	
351, 561	Hot Springs Railroad Company, by J. N. Conger, superintendent	
467	J. T. Mott, by J. N. Conger, owner	
642	Henry F. Crim, by J. N. Conger, owner	
208, 617, 733	R. F. Parker	
552, 719	J. M. Spence	
124	Jackson Matthews, his x mark; witness, C. S. Williamson, Frank Flynn	
721	J. H. Nichols, Jr	
	S. Schultice	
	A. R. Runyon	
68, 85	Frank Horton	
	Annie Horton	
211	Cornelia A. Lewis	
90	Fannie Hawkins	

Petitions of claimants filed with United States Hot Springs Commission.—Continued.

Number.	Names of Claimants.	Remarks.
23, 279	Thad. Taylor	
165, 281	John B. Brooks, M. D	
685	Charles Bryan	
180	T. J. Bryan	
38, 39 / 517, 528 \	E. Burgauer	
280	Henry Felheimer	
27, 356 / 357, 358 \	M. C. O'Bryan	
171, 244, 618	John B. Roe	
289	Henry Ware	
102	Maria Gocio	
161	Ophelia Chairs	
158	George B. French	
103	Albert Mann	
645, 660	B. W. Goode	
200, 201, 202	W. N. Benton	
91	Mary and T. J. Lewis	
606, 790	Loretta Hale	
761	W. P. Walsh	
527	Samuel W. Fordyce	
52	H. Moscowitz	
511	R. L. Grissam	
549	A. R. Winfield, trustee M. E. Church	
254	M. W. Squires	
254	L. A. Squires	
809	Geo. M. French	
510, 678	Chris. Hagen	
152	E. B. Smith	
256	Michael Shea	
330	Frank Flynn	
145, 513, 641	Jas. K. Lane	
144, 514	Wesley Steele	
540	S. H. Stitt	
114	L. H. King	
855	D. C. Rugg	
855	M. R. Rugg	
670, 671	Augusta L. Stitt	
382	Henry Hecox	
651, 653, 655 / 652, 654, 656 \	James H. Adams	
579	W. A. Kirk	
640, 672	C. S. Williamson	
673	Fannie G. Williamson	
455	John W. Clary	
142	Laura W. Baxter, by G. W. Baxter, attorney	
36	Jesse Ware, by G. W. Baxter, attorney	
244	William Thompson, by G. W. Baxter, attorney	
453	Jesse L. Lovett, by G. W. Baxter, attorney	
246	Stewart K. White, by G. W. Baxter, attorney	
111	Daniel B. Dyer, by G. W. Baxter, attorney	
800	C. E. Grover, by G. W. Baxter, attorney	
570	E. A. Shippey, M. D	
59, 857	Phineas Barnes	
16, 395	P. J. Ledwidge	
129, 130, 131	Frank C. Place, husband of Amanda E. Bryant	
512, 546, 692	W. A. Moore	
580	S. C. Law	
137	R. B. Jaggers	
458	L. B. McKinney	
336, 337	William Baird, husband of Jane Baird	
92, 93	Rachel Bertsch	
253, 750	R. C. Jones	
930, 945	M. A. O'Neal	1 not granted.
104, 105, 803	M. E. Payne	
454	J. B. McCaffrey	
422	Annie Blackwell	
284, 403	Prichard & Goode	
126, 127	G. S. Wilson	
487, 553	J. H. Nickols	
821	W. F. Clyde	
332	Rosa Loeb, wife of Jacob Loeb, deceased	
168	B. Brown	
491	Mrs. N. G. Houston	

Petitions of claimants filed with United States Hot Springs Commission.—Continued.

Number.	Names of Claimants.	Remarks.
554, 555, 556	D. D. Shipley	
210	Patrick Dugan	
170	I. W. Carhart, P. M., wife of Julia C	
613	Dutie F. Casey	
360	Mrs. J. B. Heironimus	
324	Jane L. Reed	
396, 808	L. D. Cain	
640, 801, 803	A. B. Gains	
247	G. W. Barnes	
483	S. H. Ferguson	
755, 756	J. J. Byrne	
44	Edward Curry	
497	James C. Riley	
622	S. C. Pyatt, by W. A. Moore, attorney in fact	
573	Mary A. Oller, by W. A. Moore, attorney in fact	
699	R. T. Justice, by W. A. Moore, attorney in fact	
249	Perry Huff	
140	W. B. Little	
386	George Belding	
377	L. S. Allard	
359	Lizzie Ward	
842	Mrs. Mary Jack	
381	Henderson Patillo	
920	William H. Barry, representative Garland County	
190, 340	J. W. Parker	
923	R. A. Montgomery	
58	John Waltham	
397	George McAllister	
451	Mary Mason, wife of John Mason, deceased	
944	William Curtis	
387	Henry Rayford	
923	T. J. Scott, M. D	
360	J. B. Heironimus	
881	James B. Wood, prosecuting attorney, 7th judicial district	
835	Charles S. Reed	
94, 95	Morris Moscowitz	
918	F. E. Morris	
259	F. Dengler	
906	Smith Scogin, county surveyor	
169	George Wright	
923, 188	Henry Cohn, husband Charlotte Cohn	
606	Hester A. Moores	
251	L. M. Litti	
683	Maria L. Smith	
642	H. F. Grim	
921	H. Walter Barry	
764	John H. Leutscher	
428, 429, 430	C. H. Coe	
928, 929	George W. Mann	
25	C. R. Guinn	
604, 765	Enoch Woolman	
465	Jerry Fenton	
197	J. S. Davis	
347	E. C. Sullivan	
690	Mary J. Cullen	
141	John D. Ware	
592	Bessie P. Ware	
185	Sarah E. Walker	
26	A. Gruelin	
490	M. I. Smith, by S. H. Stitt, attorney	
370	Ali Kellum	
444	A. J. Smith	
403	George W. Pritchard, by Thomas R. Thornton	
380	Greene Paine	
25	T. P. Hickson, part of C. R. Grover's claim	
98	Samuel Points	

STATE OF ARKANSAS,

Garland County:

I, Geo. W. Baxter, a notary public in and for said county, do hereby certify that the above and foregoing is a true and complete copy of a memorial signed by the claimants on the Hot Springs Reservation and adopted in mass-meeting of about nine-tenths of said claimants, and ordered to be forwarded to the Hon. A. H. Garland, our United States Senator at Washington, D. C

In testimony whereof I hereunto set my hand as such notary public, and affix my official seal, January 2, 1880.

[SEAL.] GEO. W. BAXTER,
Notary Public.

The original of this memorial is transmitted to Hon. J. E. Cravens, to be presented to the House of Representatives.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 302. GEORGE H. SMITH v. WM. H. AND MARIA GAINES.

" 227. B. H. GOODE v. SAME.

" 303. PATRICK DUGAN v. SAME.

" 304. CHARLOTTE COHN v. SAME.

" 305. RICHARD ALLEN v. SAME.

" 306. JAMES MADISON v. SAME.

" 307. D. C. RUGG v. SAME.

" 308. A. S. GARNETT v. SAME.

" 309. SAME v. SAME.

" 310. D. C. RUGG v. SAME.

" 311. VINA GRANGER v. SAME.

" 312. OTTO NEUBERT v. SAME.

" 313. JOHN J. SUMPTER v. SAME.

" 314. GEORGE G. LATTA v. SAME.

" 315. SAME v. SAME.

APPEALS FROM THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

BRIEF FOR APPELLEES.

These cases are in their essential features alike; and they are, therefore, by consent and by order of the court, submitted together.

A statement of the grounds upon which the suits are based somewhat fuller than that made by counsel for appellants, seems to be desirable.

Gaines and wife, on the 23rd day of May, 1884, filed the bills which are the foundation of the present controversy in the court below. We may take the bill in No. 302, the first case on the docket, as representing the basis of all the suits.

It alleged that in the year 1851 the plaintiffs, Maria Gaines, Albert Belding, Henry Belding and George Belding, as the heirs and legal representatives of Ludovicus Belding, under instructions from the Secretary of the Interior, entered under the pre-emption laws of the United States, the SW¼ of Sec. 33, T. 2 S., R. 19 W., for which they paid $200; that a small part of the tract was occupied by Mrs. Lydia Belding, widow of Ludovicus Belding, and that the part for which this suit was brought was occupied by Gaines and wife and the other Belding heirs, under the supervision and control of William H. Gaines; that they remained in the quiet and peaceable possession thereof until the first day of June, 1876, when they were dispossessed by the receiver appointed by the Court of Claims under the Act of Congress, entitled, "An Act in relation to the Hot Springs Reservation," approved June 11, 1870; that the plaintiffs and the other heirs of Ludovicus Belding had been in possession of said land continuously for about twenty years when this court, on the 24th day of April, 1876, decided that the said entry was invalid.

That during the time said plaintiffs were in possession of said land, they paid taxes on it, fenced it, built houses on it, and otherwise improved the same. That on the 1st of October, 1870, William H. Gaines leased a lot of ground, which has since been laid off into lots and blocks by the Hot Springs commission, in pursuance of an Act of Congress, and now known as lot 2 in block 77, in said tract above named, to John Kubler for the term of one year, to be renewed at the election of the lessee from year to year, until the title to the Hot Springs quarter section of land was settled, for the annual rent of two hundred dollars.

That said lease also provided that all buildings and improvements erected on said lot by the lessee might be removed therefrom during the continuance of the lease or within thirty days thereafter, but that they should not be removed while any part of the rent remained due and unpaid; also that the lessor should have a lien on all buildings and improvements to secure the rent. (*Tr., p. 3.*)

That said lessee had the possession under said lease, and that he and his assigns occupied under it until June 1, 1876.

That on the 24th of April, 1876, said lessee and his assigns owed the lessor for rent the sum of three hundred and eleven dollars and eighty-five cents; that said lessee and his assigns failed to remove said buildings and improvements erected thereon within the time provided in said lease, by reason whereof the buildings and improvements became the property of said Gaines.

That on the 12th of September, 1876, said lessee sold and transferred to Geo. H. Smith all his right, title and

claim to said premises, he, said Smith, well knowing that said transfer was made without the knowledge or consent of the plaintiffs; that said plaintiffs, having by arrangement with the said George, Henry and Albert Belding, become owners of the whole of said claim, in less than six calendar months after the first sitting of the Hot Springs commission created by the Act of Congress entitled, "An Act in relation to the Hot Springs Reservation of the State of Arkansas," approved March 3, 1877, filed their claim before said commission to purchase said lot; that said Geo. H. Smith filed a like claim; that upon the hearing of said claims they were consolidated by said commission for the purpose of taking testimony; that said petitions so filed and the testimony taken before the commission clearly showed that said Smith had acquired his possession in no other way but by said lease, as would appear by reference to a complete copy of the petition, record, entries and testimony in said claims, filed with said bill marked Exhibit "A" and made a part thereof. (*Tr., p. 4.*)

That said commission misconstrued the law applicable to that state of facts, and awarded the right to purchase said lot to said Smith, who since said award had purchased said lot from the United States, and had received a patent therefor; and that on account of said misconstruction of the law as applied to the facts, the right to purchase said lot, which should have been awarded to the plaintiff, was illegally awarded by said commission to Geo. H. Smith.

That as the defendants had never had any title to said lot or the possession thereof, except under said lease, con-

taining covenants to return possession to plaintiff, Wm. H. Gaines, they should be held as trustees of said lot for the use and benefit of the plaintiffs, who offered to pay any sum of money that might be found due to the defendants, or either of them by reason of any money paid to the United States for the purchase of said lots, and to do all other acts which might be found to be just and equitable.

That the property sued for was worth more than five hundred dollars; and that this cause of action arose under the laws of the United States.

The plaintiffs prayed that the defendants be required to answer the bill, but not under oath; that an account might be taken between the plaintiffs and defendants severally; that the plaintiffs might be allowed reasonable rents for the occupancy of said lot, that the defendants might be decreed to hold it as trustee for the plaintiffs; and to convey the same to them; and to have all other proper relief. (*Tr., p. 5.*)

The following is a copy of the lease referred to in the bill:

"HOT SPRINGS, ARK., AND IN THE }
TOWN OF HOT SPRINGS. }

"This agreement, made and concluded this 1st day of October, 1870, between Wm. H. Gaines, party of the first part, and John Kubler, party of the second part, witnesseth: That the said Wm. H. Gaines, for and in consideration of the terms hereafter expressed, hath rented or leased to the said John Kubler, for his use and benefit, all the portion or parcel of land situate in Hot Springs, Ark., described as follows: commencing ten feet south of Shoemaker's shop and running

twenty feet on front west side of street back to Sumpter's fence, for the space and term of three years, or until the title to the Hot Springs quarter section is settled; said Kubler to have the privilege of erecting a house, and have the privilege of removing such buildings as he may erect at the termination of lease; said lease not to be transferred without consent of Wm. H. Gaines, party of the first part. The said Kubler, for himself, his heirs and assigns, agrees to pay to the said Wm. H. Gaines, his landlord, or his heirs and assigns, the sum of two hundred dollars ($200) a year, to be paid every quarter in advance, the sum of fifty dollars, ($50) rent to commence on the 1st day of October, in the year of our Lord (1870) eighteen hundred and seventy.

"WM. H. GAINES, [Seal.]

"JOHN KUBLER, [Seal.]

"$50.

Received of John Kubler $50 for the first quarter, commencing on the 1st day of October, 1870, to the 1st day of January, 1871." (*Tr., p. 111.*)

The facts stated in the bill were fully proved. It was conclusively shown that Gaines and the Belding heirs had been in peaceable possession of the lands claimed by them for more than a quarter of a century before the 24th day of April, 1876, during which they had put permanent improvements on them costing many thousands of dollars, and that this proof was made before the commission, (*Tr., pp. 47-8*); that Smith had filed an opposition claim, and that the commission had decided in his favor, because they considered

that his rights were in no wise affected by his relationship as tenant to Gaines. Confessedly there was no other ground upon which to place their finding.

BRIEF FOR APPELLEES.

We are admonished to brevity by the voluminous brief filed by learned counsel for the appellants. The time of the court is valuable. Life is also short.

I.

Counsel for appellants say that "Gaines claimed before the commission, as is now claimed by the bill, that the improvements on the lots became his, not by reason of contract or purchase, but by forfeiture under the lease."

It is true that appellees claimed that as the buildings put upon the lot were not removed within the time limited by the lease, the right of removal by the tenant was abandoned. But that was only an incidental contention of no great importance. The claim of the appellees was co-extensive with the estoppel which prevents a tenant who has acquired possession as such from claiming title adversely to his landlord; a fundamental principle that grows out of the relation of the parties, and which does not depend on any verbal nicety in the construction of particular covenants in the lease. In all such cases, as was said in *Rector v. Gibbon*, *111 U. S.*, *284*, the tenants, "whilst retaining possession, are estopped to deny his possession;" that is, the possession of their landlord.

Counsel say that "it is also recited that the Belding heirs had paid taxes, and had built some houses upon said

quatter section, and fenced a portion thereof; but there is no allegation that they made any improvements on the specific lots in controversy." (*Brief, p. 8.*)

This proposition does not tend however in any way to invalidate the estoppel. Doubtless the appellees had not built houses on every square foot of the land included in their claim and possession; but the appellants by accepting the lease created the relation of landlord and tenant, and called into being every thing else which the name would imply; and the principle of estoppel does not depend on the question as to whether rented lands are improved or unimproved.

The possession of the appellees is subjected to a critical analysis with a view to establish a proposition that they could have no possession save one purely pedal; that whenever they built houses on their claim, their possession must be rigidly confined to the foundation walls thereof. Conceding this rigorous exposition of the law, it would still follow that appellants got their possession by the consent of the appellees, and that, having done so, they cannot now repudiate this pacific origin by setting up a hostile claim. The estoppel, in other words, does not in any way depend on the validity of the landlord's title. If in every case the landlord had to show a perfect title as against the tenant, then the estoppel would be an absurdity.

"When the relation of landlord and tenant is established, the rule of estoppel upon the tenant prevails, though the tenancy be created by a deed which shows that the landlord possessed no legal estate."

Big. Est., p. 538.

By the terms of the lease it was provided that the tenant should "have the privilege of removing such buildings as he may erect at the termination of the lease."

Most of the leases provided that the lessees might remove any such buildings within thirty days after their termination. The Kubler lease, in case 302, was as above quoted. Under it the tenant, we may concede for the purposes of this argument, would have a reasonable time after the termination of the lease during which he might remove any buildings put up by him.

The lease terminated on the 24th day of April, 1876, the day that the title to the property was settled by the decision of this court in the *Hot Springs Cases, 92 U. S., 698.*

The right to remove the buildings was however deliberately abandoned by the tenants; for by setting up a claim to the land in hostility to the lease they deprived themselves of the right to claim anything under it.

"After attacking a transaction and failing, the party so doing may not be allowed to turn round and claim rights under it."

Big. Est., p. 687.

"If parties in court were permitted to assume inconsistent positions in the trial of their causes the usefulness of courts of justice would be paralyzed; the coercive process of the law, available only between those who consented to its exercise, could be set at naught by all. It may accordingly be laid down as a broad proposition that one who, without

quarter section, and fenced a portion thereof; but there is no allegation that they made any improvements on the specific lots in controversy." (*Brief, p. 8.*)

This proposition does not tend however in any way to invalidate the estoppel. Doubtless the appellees had not built houses on every square foot of the land included in their claim and possession; but the appellants by accepting the lease created the relation of landlord and tenant, and called into being every thing else which the name would imply; and the principle of estoppel does not depend on the question as to whether rented lands are improved or unimproved.

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mistake induced by the opposite party, has taken a particular position deliberately in the course of a litigation must act consistently with it; one cannot play fast and loose."

Id., p. 717, and cases cited.

"Where a party gives a reason for his conduct and decision touching anything involved in a controversy, he cannot, after litigation has begun, change his ground and put his conduct upon another and a different consideration. He is not permitted thus to mend his hold. He is estopped from doing it by a settled principle of law."

Railway Co. v. McCarthy, 96 U. S., 258.

In this case however the appellants, after repudiating the leases, are vociferous in making claims under them.

The appointment of the receiver by the court of claims did not change the attitude of the parties; for the appointment of a receiver changes no rights whatever, except the right of custody and management, while the property committed to him remains in his hands, *in gremio legis.*

High Rec., sec. 134.

Of course when the tenant sets up a title in himself in hostility to that of the landlord he forfeits his estate, and the latter enters under his former title.

Wood, Landlord & Tenant, secs. 508-9.

So much for these very elementary principles.

There is nothing remarkable about the leases. They were for "the term of three years, or until the title to the Hot Springs quarter section is settled."

"Thus a lease for twenty-one years, if A shall so long live, is a good lease for twenty-one years if A lives, or as long as A lives if he dies within the term."

Wood, Landlord & Tenant, sec. 78.

The author gives various examples of leases of this kind, the duration of which may depend on a future contingency. In principle they are not distinguished from other leases running to a fixed determination.

In these cases the moment the tenants filed their petitions before the commissioner setting up titles hostile to that of their landlord, they ceased to have any rights of any kind under their leases. It is familiar law that "a tenant who disputes his landlord's title, and claims the fee in his own right, becomes a trespasser, and may be ejected without notice."

Walden v. Bodley, 14 Peters, 156.

Counsel say that the "appellees allege in the bill that they now claim the improvements by forfeiture; but it is not claimed that the commissioners erred in any matter of law in finding the appellants were the owners of the improvements." (*Tr., p. 12.*)

This seems to be a mere juggle of words. The bills set out the facts, and allege that upon them the commissioners erroneously, and upon a mistaken view of the law, found that the right to purchase was vested in the tenants.

The word "improvement" in the brief for appellant is used in a two fold sense, as will best suit the exigencies of the dialectics, first, as denoting the artificial amelioration of

the land in controversy, and, second, as denoting a house erected by the tenant which he had the right to remove.

If A owns a house on the land of B, then the house is merely personal property, and there is annexed to it no interest in the land whatever.

1 Washb. Real Prop., p. 2.

It is plain that the removal of an article of personal property from land cannot affect the title to the land. The horse of A grazing on the land of B is not an incident or an evidence of title to the land by which A can claim any right to it.

Counsel speak all the way through their argument as if the appellees claimed that the tenants had *forfeited* their buildings.

But we have no occasion to resort to that doctrine.

Forfeiture includes the notion of a loss sustained by reason of a violation of duty.

"Forfeiture means the loss of something as a penalty for doing or omitting to do a certain required act; the taking of some property, right, privilege, franchise or benefit from one person and transferring the same to another; or punishment annexed by law to some illegal act or negligence in the owner of lands, tenements or hereditaments, whereby he loses all his interest therein, and the same becomes vested in the party injured, as a recompense for the wrong which he alone, or the public together with himself, hath sustained.

The term includes the loss as a penalty, and the transfer of the thing to another without the owner's consent, for the violation of some law, or duty or obligation."

8 Am. and Eng. Enc. Law, p. 443.

In these cases the leases did not make it the duty of the tenants to remove any buildings erected by them; and hence they could incur no forfeiture by reason of their failure to remove. They had the privilege of removing them, which they could exercise or not as they pleased. They had in that respect perfect liberty of action. As they did not choose to remove them, they must be taken to have abandoned them to the owner of the soil. After such a great lapse of time, they could not be heard to claim the right to remove at this late day, nor when these suits were begun. But it is not necessary to discuss that question, as they have never manifested any wish to remove any buildings.

As for any improvements placed on the land by the tenants after they repudiated their holdings, they are governed by the maxim, *Aedificatum solo, solo cedit.*

"If the tenant or occupier of land annexes anything to the freehold, neither he nor his representatives can afterwards take it away."

Broom Legal Maxims, p. 310.

Linahan v. Barr, 41 Conn., 471.

Woodward v. Payne, 16 Cal., 444.

We suppose that it might be urged that after the title was adjudged to be in the United States, the tenant had no

right to remove the buildings. Conceding that to be so, it still remains true that the tenants never manifested any wish to do so. They thought that they would find it more profitable to abandon all rights under their contracts, and to violate express covenants, than to perform them.

Let us suppose that the tenants had not opposed the claim of Gaines to purchase the land, and that the right to purchase had been awarded to him, that he had purchased, and that after all that a tenant had asked for the privilege of removing his buildings, can any one doubt but that he would still have had the right to do so?

The time that the receiver was in possession would not be counted against the tenant.

High on Receivers, sec. 184.

Buswell Lim., sec. 131.

Nor would the landlord be heard to say that the time during which the land was held adversely should be counted against the tenant. Nor could the tenant be heard to say that he was wholly absolved from all duty to his landlord. He could only claim the right to remove by reason of one of the clauses in the lease. By doing so he would necessarily acknowledge the relation of landlord and tenant. Conceding, for the sake of the argument, that the inability of the landlord from the 24th day of April, 1876, until the time of the final award to protect the possession of the defendants must be imputed to him as a fault, still the effect of that fault would not be to leave the parties in the same situation as if

they had never occupied the relation of landlord and tenant. In such case the promissor "is excused to the extent in which performance is made impossible by the promisee."

1 Whart. Cont., sec. 312.

But as the tenants, instead of manifesting the slightest wish to perform their contracts, displayed the most reckless haste in violating them, it is perhaps needless to discuss the question as to what their rights would have been if they had pursued an opposite course.

It is very clear that the tenants could not by taking a lease of the land acquire any interest in it in excess of the terms of the lease. As was pertinently said in *Rector v. Gibbon:*

"Lessees under a claimant or occupant, holding the property for him, and bound by their stipulation to surrender it on the termination of their lease, stand in no position to claim an adverse and paramount right of purchase. Their possession is in law his possession. The contract of lease implies not only a recognition of his title, but a promise to surrender the possession to him on the termination of the lease. They therefore whilst retaining possession, are estopped to deny his rights."

Counsel say:

"The question to be answered is: Does mere former possession of the ground out of which the lot is carved entitle the plaintiffs to an award of the lots claimed, without showing that they made or owned an improvement thereon, on or prior to the 24th of April, 1876." (*Tr., p. 13.*)

This is certainly not the question that needs answer here.

As the heirs of Belding held under a paper title their possession would in law extend to every part of the land lying within the defined boundaries. If the tenants had never secured a foothold on the land under the leases they would never have been in the way, and the claim of the Belding heirs would have been unobstructed. Would the government have contended that they could not purchase a single foot of the tract that was not covered by a house? We apprehend not.

But how can it be said that the landlord had no improvement on the particular and identical lot covered by each lease, when the tenants are claiming a right to purchase by reason of improvements that confessedly belong to the landlord, unless the tenant is also entitled to the land as well?

It is true that a bare majority of the commissioners found that the improvements belonged to the tenants. But this they did as they did in the Rector-Gibbon case by totally ignoring the relationship that existed between the parties. Upon what theory they disregarded the plainest equities, the most palpable rights, no explanation has ever been given so far as we know. They probably thought that there was a general *debacle*, in which all ordinary considerations were submerged.

II.

The act of 1877, (*sec. 5, 19 Stat. Large, 378,*) provides that "no claim shall be considered which has accrued since the 24th day of April, 1876."

This evidently referred to the time that the final adjudication was made by this court settling the title to the Hot Springs reservation. And the claims referred to in the act were claims to the lands or parts thereof, and not merely claims of right to hold possession temporarily, for a day or a week or longer, under some one else that claimed a right in the land. The claim that the tenants had on the 24th day of April, 1876, was to hold under the lease, in strict subordination to the superior rights of their landlord; and if they afterwards originated a different claim that was antagonistic to the superior claim of right of the landlord, it was, within the meaning of the Act of Congress, a new and distinct claim, not admissible, because it was thought out, devised and created after the settlement of the title by the judgment of this court on the 24th day of April, 1876, and is a claim that is in no sense a continuation of a former claim, but one wholly inconsistent with it, and with the former status of the parties. Indeed as the tenants could not foresee the future, it is impossible that they should ever have thought of setting up any claim to the land *until after* the passage of the act of March 3, 1877.

III.

It is contended by counsel for the appellants that as the Act of Congress declared that "no claim shall be considered that accrued since the 24th of April, 1876," George, Henry and Albert Belding could not lawfully assign their interest in the claim to Gaines after that date.

This objection can hardly be taken seriously. The object of the clause in question is too plain to be misunderstood.

It was to prevent persons who had never had any claim to the land, or any interest in it, who had never spent any money on it, from making an irruption upon it, and setting up claims. Obviously without some such provision a mob would have taken possession of the lands, and the claimants would have been well nigh innumerable; witness the recent influx into Oklahoma and other places suddenly opened to the cupidity of the settler and the land grabber. Therefore the inhibition does not relate to the time of the acquisition of the claim by the claimant, but to the date at which the claim "accrued."

In *Rector v. Gibbon* the heirs of Ballantine sought to sustain their position not only on the ground that the privilege of purchasing the lands was given to the tenant and not to the landlord, but also on the ground that by reason of his lease from the receiver their ancestor had acquired a claim that was free from any fiduciary implication. In answer to this latter contention the court was pleased to say:

"It is very clear that the heirs of Ballantine are not parties for whose benefit the act of 1876 was passed. He only acquired his claim to the property during that year by transfer from the original lessees of their leasehold interest. He could not assert any *independent* claim acquired after April 24, 1876."

It is clear that if the court had thought that Ballantine could not claim under the lease made to Gibbon because it was assigned to him after the 24th day of April, 1876, then the court would have had no occasion to consider the effect

of the relationship of landlord and tenant at all, as Ballantine's claim would have been void because acquired after the 24th day of April, 1876, though it had its origin in the hands of Gibbon, the lessee, before that time.

Unless where forbidden by the homestead laws improvements on public lands have never been held to be inalienable.

Hughes v. Sloan, 8 *Ark.*, 146.

McCain v. Leslie, 15 *Id.*, 312.

Gaines v. Hale, 26 *Id.*, 193.

In Arkansas by statute they are made subject to execution.

Mansfield's Digest St., 1884, *sec.* 3076.

The point that Gaines and wife were not the owners of the Belding claim was not made before the commissioners or in the court below; and the objection made here that the interests of George, Henry and Albert Belding could not be assigned after the 24th day of April, 1876, is manifestly devoid of merit.

IV.

As to the decision in the *Rector-Gibbon* case, which must furnish the rule of decision in this case, the counsel for appellants say that they admit that "if the court had the power to decide anything" in it, "it is decided correctly." The concession is of no importance; and the power of the court to decide it is manifested by the fact that the court did decide it.

A very labored effort is made to show that there is a material difference between the lease in the Rector case and

those which form the subject of the present controversy; an effort which however is unprevailing. In the Rector case the lease provided that the tenant might build a hotel on the premises, which was to be paid for by the lessor at the end of the term. The hotel was never paid for; and it was contended for the assignees of the tenant that thereupon the hotel remained the property of the tenant, constituting an improvement of the land. The court held otherwise; and the decision was based not on the particular form of the lease, but on the broad and fundamental principle that is of controlling efficacy in all cases of this sort, that the tenant is estopped to deny the title of his landlord.

The contention of counsel for appellants is that as the court below decreed the houses to the tenants it should have given them the land as well. This result does not seem however to follow. We have often heard of cases where houses were considered as attached to land, and as forming a part of it. Here it seems to be contended that the land was attached to the houses as an incident thereof. Was there anything in the position of the parties which changed their personal identity, by which the tenants became the landlord, and the landlord became the tenants?

Counsel say that the appellees did not appeal from the decrees giving the houses to the tenants. We have already intimated that in our opinion the houses by law belonged to the landlords. Ideal justice is not an every day commodity; and practical and substantial justice is often an acceptable substitute. As the appellees prayed no appeal, it can only be said that they acquiesced in the decree rendered by the court below. That was their affair.

V.

The brief of counsel for appellant contains a very labored criticism of the decision in the Rector case. Counsel say that the attention of the court is called "to some matters that were not called to its attention before, with a feeling of confidence, if they had been the decision *might* have been different." (*18.*) Confidence in a mere possibility is hardly that kind of faith for which martyrs have died.

It is true that the brief for the appellants, with its voluminous appendix, does invite the attention of the court to matters that were not, so far as we know, ever alluded to in the argument in the Rector case, viz.: Petitions presented by lobbyists to Congress, and other documents of like character, matters with which the courts have no concern. We may well suppose that Congress was besieged in the usual manner, and that interested parties made a great clamor; amid which nevertheless the still small voice of justice may have been audible to a listening prophet. How can any one say that such petitions favorably influenced the legislative mind? Sometimes such demands rather repel than persuade. How can the court know that it has a full record of all the petitions that rained on the two houses? And if it had such a record, what is to become of the oral solicitations said to be sometimes equally effective? What is the proposition of counsel, save that an appeal shall be taken from Congress to the lobbyists that prey upon it? And who can say that some members of Congress may not have heads of their own?

It seems also that certain amendments to certain acts

were voted down; for what reason we know not; probably because they were not needed or because they went too far or did not go far enough.

In the act finally passed the Congress expressed its real intention; and that, after much controversy, has received a judicial construction. In speaking of it, counsel assume that the court overlooked the act of June 16, 1880. Had that been the case the omission would have been something quite unparalelled in the history of jurisprudence. That suit was brought on the 12th day of July, 1880, something less than a month after the passage of the act in question. It involved property of great value; and was stubbornly contested on the part of the defendants at every point. They were represented by counsel distinguished for ability, who had been engaged in the Hot Springs litigation for very many years. They succeeded in gaining a favorable decree in the court below. On appeal the only question that was involved was the finality of the finding by the commissioners. The case was decided here on the 7th day of April, 1884. After that Senator Edmunds, who was familiar with the legislation on the subject, (see *brief for appellants, p. 70*), filed a long and exhaustive petition for a reconsideration of the case, which was duly considered and overruled. The court held that as far as the proceedings of the land department were concerned, the action of the commission was final; but declared that "when the legal title has passed from the United States to one party when in equity and good conscience, and by the laws of Congress, it ought to go to another, a court of equity will convert the holder into a trus-

tee of the true owner, and compel him to convey the legal title." Thus, if a guardian had got a title to one of the lots in his own name, his ward might, in a proper case, have enforced the trust on well known principles of equity jurisprudence, the finality of the commissioners not being impugned in such a case any more than the finality of a judgment at law is impugned when a court of chancery compels the plaintiff therein to clothe himself with the garb of a trustee. The court in delivering the opinion did not, it is true, expressly refer to the statute of June 16, 1880; but it is a strange assumption that the courts must be considered as having overlooked all the laws to which they make no express reference.

That no mention of that act was necessary is obvious; for its purpose had nothing to do with the question before the court.

By the 11th section of the act of March 3, 1877, (*19 Stat. Large, 379*), it was provided that the persons in whose favor awards were made might purchase the lands which had been awarded them "at the price fixed by said commissioners."

By the 1st section of the act of June 16, 1880, the same persons were allowed to purchase by paying "forty per centum of the assessed value of said land as placed thereon by said commissioners." (*21 Stat. Large, 289.*)

The object of that section was not to cut off any equities that might exist between private parties; and it was not so considered by the court in the Rector case. If anything

was overlooked by the court in deciding it, that result was certainly unexampled, considering the zeal and ability of counsel representing the tenants, and the time and attention given to it by the court, the judges being divided in opinion, so that the dissenting judges must have examined the legislation, which was not extensive and was very recent, even if the majority of the court could have overlooked matters so obvious and notorious. Few cases have been more thoroughly argued, or more closely scrutinized. It is true that counsel for appellants in this case were not before the court in that. The bar of the court is very numerous; and in the nature of things, only a few of its members can participate in the hearing of any one cause. Counsel coming into the litigation at a late day, easily persuade themselves that they find many new things which are not new at all; as travelers in strange lands often rejoice in the supposed discovery of new regions when they are only following in the track of earlier explorers; and hence arise international disputes of various kinds.

There is not a single argument that is made in this case that might not just as well have been made in the Rector case, or that was not there made in some form or other. Everything that could be said in that case was said; and the difference between that case and this is purely fanciful. The argument of counsel is therefore in the teeth of the decision there made. They say that they are "not here to make a wanton attack" on the ruling in that case. (*18.*) The word wanton is, of course, used subjectively. The attack is a direct one nevertheless. Farther on counsel say that they "will show that if the court is infallible it has not been consistent." (*27.*)

We are not concerned with such inquiries; and we incline to think, as counsel suggest, that they "may not serve any useful purpose."

Consistency, we may suppose would, according to the views of counsel, be best displayed by overruling every well considered case at the first opportunity that occurs. Occasionally in the law magazines some writer equally endowed with genius and leisure devotes a few pages to prove that the Dartmouth College case was wrongly decided. Possibly they form interesting reading for the juniors. Perhaps a score of persons could be found who would assert that *Leisy v. Hardin* ought to have been ruled the other way; but it was decided, though by a divided court; and hereafter as to the point on which it turned the country will be at rest for many years, perhaps forever.

Speculative jurisprudence no doubt presents an attractive field for any one that is qualified to shine therein; but the practical side of life has also certain claims which mainly engage the attention of the court. Entertaining these views me must decline to discuss anew the decision in *Johnson v. Towsley* and prior cases on the same subject cited by counsel. They were discussed by us in briefs filed in the Rector case with indifferent ability; and the arguments there made, along with many other things, are now obsolete. It is needless to cite cases as to the maxim *stare decisis*. They are very accessible; and the importance of the rule will hardly be under estimated in a class of cases so few in number and lying within such narrow limits.

The tenants in these cases were not in any way different from other tenants; and they were subjected to no greater temptations than such as often overtake persons occupying that position. Land owners or occupiers would hesitate to rent lands if every lease, like the Trojan horse, served to introduce one or more enemies into the camp. Fortunately for the peace of mankind, whatever may be the disposition or cupidity of the tenant, he is disarmed in such a way as to prevent him from doing an act of injustice towards the person through whom he has obtained possession.

The appendix, which may be regarded as a sort of apocryphal annex to the canonical brief of counsel for appellants, contains much uncanonical matter; and among other things the aforesaid petitions supposed, but not proved, to have been forwarded by certain signers living at Hot Springs. All the way through the brief the situation is portrayed in a light which is not reflected from the evidence, and which does not emanate even from the apocrypha itself. The inference sought to be drawn is that there was a contest between a large body of meritorious tenants who were ground down by a lot of grasping landlords, thus raising a sort of Irish question in miniature. One of these petitions seems to have been got up on the 2nd day of January, 1880, (see *appellant's brief, p. 165*), and the other is not dated. (*p. 147.*)

If any one should care to read the petitions he would find that they relate to other matters. The undated petition prays that the lands may be sold, "giving and reserving to *bona fide* settlers the prior right and privilege of purchasing

their substantially improved premises, lots, or enclosures, at a nominal or reasonable price, and on deferred payments." (*147.*)

The other petition asks that the assessment on the town be remitted, that the houses removed by the commissioners be paid for, that the rents collected by the government be repaid. There is a certain amount of objurgation against usurers and speculators; but not a word against landlords. Gaines and the Belding heirs might have signed both petitions without in any way waiving or impairing any claim. Yet one would infer from the brief for appellants that these petitions were got up in the sole interest of tenants, and that the tenants who are now denying the titles of their landlords, something less than a score, have behind them the hundreds of persons who signed those petitions, and whose improvements were scattered over the whole territory of the four sections. But the appellants are in no sense the representatives of those petitioners. They are like the three tailors in Tooley street, who subscribed themselves, "We, the people of England." The melodramatic element of the case, which is the principal part of it, has no foundation for its support.

It is said in the brief for appellants (*23*) that Gaines abandoned his claim because he testified that he "made no claim to anything after the court decided against" him; and that he "disclaimed owning anything until Congress passed the land laws."

It is hard to see how he could have done otherwise consistently with honesty and candor. From the day that

it was decided that the land belonged to the United States he was only a tenant at sufferance. This language of his was not used for the purpose of entrapping any one; nor was any one misled by it. Not a single element of an estoppel is made out. He did not know what Congress would do in his behalf; and he can hardly be taken as renouncing benefits that had never been conferred. According to the argument of counsel for appellants, the tenants were making a claim in their own right before the 24th day of April, 1876. If so, they must have foreseen the act of March 3, 1877. But this miraculous spirit of prophecy is granted to but few; and if Gaines did not possess it he ought to stand excused, though, being an old man, verging on to a hundred years, his time of life might be thought favorable to prophecy.

VI.

There are various minor points made in the brief for appellants that we pass without special notice. One of them we may refer to as a fair specimen of others. In the Rector case the well known rule that a tenant cannot deny the title of his landlord was applied. To see to what an extent this very plain proposition may be travestied, we refer to the parallel column on page 56 of the brief for appellants.

VII.

On behalf of appellants it is asserted that the rents allowed by the court below "are excessive and extortionate." (*p. 83.*) Counsel refer to the case of *Lawrence v. Rector, 137 U. S., 139*, where the rents were cut down, and ask

that the same rule be applied. The rule was that "the measure of liability is not the rental value, but the actual receipts."

Counsel add: "The testimony does not disclose the actual receipts, as that phase of the case was not referred to the master."

How can this court then modify the decree of the court below without any evidence to show that the decree is wrong? Counsel indeed suggest a way. They say: "In point of fact no rent was received by any of the appellants from the lots in controversy!" We had supposed that the office of a brief was to discuss evidence, not to furnish it.

No exceptions were taken to the reports of the master so as to raise this point.

No exceptions were made before the master at all; and they could not be taken for the first time in the court below.

Story v. Livingston, 13 Pet., 359.

Confessedly the question raised here was not presented in the court below in any form; and hence it cannot be raised here.

New Orleans v. Gaines, 15 Wall., 624.

Respectfully,

U. M. Rose,

G. B. Rose,

R. G. Davies,

For Appellees.

Transcripts

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Records

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Supreme Court U. States

145 U. S. 141.

(Complete)